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A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

Volume 3
Issue 16

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iv

Table of Docket Numbers..... vi

Table of Rulemaking Numbers..... vii

Table of Localities.....viii

Table by Subject Matter..... x

Table by Statutory and Rule Provisions.....xiii

Decisions, Reports, Memorandum Opinions, Orders, and
Other Selected Material.....4631

Table of Cases
Volume 3
Issue 16

Case Name	Page
ABS Communications	4745
AT&T Company	4784
AT&T Company	4785
AT&T of Virgin Islands, Inc.	4646
Abuses of Commission's Processes by Broadcast Applicants	4740
Access Tariff Filing Schedules	4810
Amateur Service Rules - Change of Address/Deceased Licensees	4824
Amendment of Part 15 - Erratum	4855
Amendment of Part 90	4817
American Telephone and Telegraph Company	4683
Ameritech Operating Companies	4815
Ameritech Operating Companies	4838
Audio Enterprises, Inc.	4644
Automated Maritime Telecommunications Systems	4690
Automated Maritime Telecommunications Systems	4736
BellSouth	4645
BellSouth	4806
BellSouth Telephone Companies	4869
Boyd Enterprises, Inc.	4753
Bush, Jr. Lawrence L.	4771
Certain Telephone Companies File Revisions to Cost Manuals	4858
Community Telecommunications Network	4850
Contel ASC	4862
Contel Corporation	4664
Crico Telecommunications of San Jose	4846
Digital Radio Networks, Inc.	4807
Evans, Gwendolyn G.	4633
Extension of Part 15 Provisions for Cordless Telephones	4775
GTE Hawaiian Telephone Company Incorporated	4761
GTE Telephone Operating Companies	4674
Garcia, Armando	4767
IDB Communications Group, Inc.	4825
Knetsch, Tana S.	4798
Kuiper, David K.	4802
Langford, Larry	4746
MCI Telecommunications Corp.	4782
MCI Telecommunications Corp.	4762
MTS/WATS Market Structure	4837
Marlin Broadcasting of Central Florida, Inc.	4699
Miller, P. Scott	4663
Mountain States Telephone and Telegraph Co.	4805
Mt. Baker Broadcasting Co., Inc.	4777

Case Name	Page
Naguabo Broadcasting Company	4634
National Telephone Services, Inc.	4673
National Telephone Services, Inc.	4781
Network Telecommunications, Inc.	4780
Northern Missouri Christian Broadcasting, Inc.	4632
Ocean Waves Broadcasting	4637
Oculus Broadcasting Corporation	4660
Onyx Cellular Corporation	4856
Page America of Maryland, Inc.	4848
Parlow, Richard D.	4834
Public Telephone Council Petition for Declaratory Ruling	4779
Puerto Rico Telephone Company	4808
Ramapo Indian Hills Regional High School District	4859
Rates for Dominant Carriers	4836
Rebecca Radio of Marco	4631
Replacement DOMSATS	4795
Robinson, David L.	4796
Southwestern Bell Telephone Company	4757
Spanish International Communications Corporation - Erratum	4873
Spectrum Allocation for Cordless Telephones	4774
Stay of Separation Criteria	4742
Stegus Corporation	4641
Swan Broadcasting Limited	4751
Table of Allotments, FM, Bastrop and Burnet, TX	4816
Table of Allotments, FM, Benton, Clarksville,AR	4840
Table of Allotments, FM, Burnside, KY	4657
Table of Allotments, FM, Dahlonega, GA and Murphy, NC	4693
Table of Allotments, FM, Dalton and Rockmart, GA	4827
Table of Allotments, FM, Elkton, VA	4787
Table of Allotments, FM, Ellensburg, WA	4868
Table of Allotments, FM, George West, TX	4697
Table of Allotments, FM, Gregory, TX	4853
Table of Allotments, FM, Hastings, FL	4763
Table of Allotments, FM, Havana and Madison, FL	4793
Table of Allotments, FM, Idaho Falls, ID	4648
Table of Allotments, FM, Indian Springs, NV	4655
Table of Allotments, FM, Iuka, MS	4832
Table of Allotments, FM, Jennings, and Erath, TX - Erratum	4865
Table of Allotments, FM, Jupiter, FL	4695
Table of Allotments, FM, Lynnville, IL	4851
Table of Allotments, FM, Minocqua, WI	4788
Table of Allotments, FM, New London and Merrill, WI	4829
Table of Allotments, FM, Ocilla, GA	4765
Table of Allotments, FM, Ontonagon, MI	4833
Table of Allotments, FM, Palm Springs, CA	4831
Table of Allotments, FM, Parkersburg, WV	4790
Table of Allotments, FM, Peshtigo, WI	4789

Case Name	Page
Table of Allotments, FM, Roseburg, OR	4852
Table of Allotments, FM, Savanna and Mt. Morris, IL	4650
Table of Allotments, FM, Seabrook, TX	4866
Table of Allotments, FM, Selma, AL	4653
Table of Allotments, FM, Stamford, TX	4652
Table of Allotments, FM, Wickenburg, AZ	4698
Table of Allotments, TV, Jonesboro, AR	4791
Table of Allotments, TV, Panama City, FL	4854
Technical Flexibility in Mobile Communications Services	4776
Technical Parameters for FM Allocation Rules - Part 73	4773
Telepictures Broadcasting KSPR Corp.	4870
Texas Communications Limited Partnership	4768
Trac Communications, Inc.	4864
US Sprint Communications Company	4647
US Sprint Communications Company	4783
US West	4809
United Broadcasting of Idaho, Inc.	4659
WCVQ, Inc.	4749
Werber, Frank	4662
Whiteaker Communications	4755

Table of Cases by Delegated Authority and FCC Number

Volume 3
Issue 16

Delegated Authority or FCC Number	Page	Delegated Authority or FCC Number	Page
DA 88 - 962	4633	DA 88 -1144	4793
DA 88 - 974	4634	DA 88 -1146	4646
DA 88 - 975	4637	DA 88 -1147	4647
DA 88 - 978	4659	DA 88 -1149	4663
DA 88 - 979	4641	DA 88 -1153	4809
DA 88 - 980	4746	DA 88 -1154	4815
DA 88 - 981	4660	DA 88 -1155	4827
DA 88 - 982	4662	DA 88 -1158	4829
DA 88 - 999	4869	DA 88 -1160	4831
DA 88 -1061	4749	DA 88 -1161	4832
DA 88 -1062	4751	DA 88 -1162	4833
DA 88 -1078	4753	DA 88 -1166	4664
DA 88 -1079	4755	DA 88 -1167	4805
DA 88 -1081	4768	DA 88 -1168	4673
DA 88 -1082	4796	DA 88 -1169	4745
DA 88 -1083	4771	DA 88 -1170	4795
DA 88 -1084	4798	DA 88 -1171	4866
DA 88 -1087	4802	DA 88 -1172	4837
DA 88 -1095	4648	DA 88 -1173	4846
DA 88 -1096	4650	DA 88 -1175	4808
DA 88 -1097	4657	DA 88 -1176	4848
DA 88 -1099	4693	DA 88 -1177	4757
DA 88 -1100	4868	DA 88 -1178	4761
DA 88 -1101	4816	DA 88 -1179	4762
DA 88 -1102	4655	DA 88 -1184	4773
DA 88 -1116	4683	DA 88 -1186	4840
DA 88 -1117	4644	DA 88 -1187	4851
DA 88 -1129	4836	DA 88 -1189	4852
DA 88 -1130	4674	DA 88 -1192	4853
DA 88 -1131	4645	DA 88 -1193	4854
DA 88 -1133	4806	DA 88 -1194	4774
DA 88 -1134	4652	DA 88 -1195	4775
DA 88 -1135	4653	DA 88 -1196	4776
DA 88 -1136	4695	DA 88 -1197	4858
DA 88 -1137	4697	DA 88 -1198	4763
DA 88 -1138	4698	DA 88 -1200	4779
DA 88 -1139	4787	DA 88 -1201	4838
DA 88 -1140	4788	DA 88 -1202	4765
DA 88 -1141	4789	DA 88 -1203	4780
DA 88 -1142	4790	DA 88 -1204	4781
DA 88 -1143	4791	DA 88 -1205	4782

Delegated Authority or FCC Number	Page
DA 88 -1206	4783
DA 88 -1207	4784
DA 88 -1208	4785
DA 88 -1209	4807
DA 88 -1211	4825
DA 88 -1212	4855
DA 88 -1213	4824
DA 88 -1214	4850
DA 88 -1216	4856
DA 88 -1219	4862
DA 88 -1222	4864
DA 88 -1226	4865
DA 88 -1228	4873
FCC 88 -202	4810
FCC 88 -234	4777
FCC 88 -242	4870
FCC 88 -245	4690
FCC 88 -246	4736
FCC 88 -248	4817
FCC 88 -250	4740
FCC 88 -255	4742
FCC 88 -258	4767
FCC 88 -262	4834
FCC 88 -263	4859
FCC 88D -21	4632
FCC 88D -22	4699
FCC 88R -45	4631

Table of Cases by Docket Number
Volume 3
Issue 16

Docket Number	Page
CC Dkt.No.78 - 72	4837
CC Dkt.No.86 - 79	4809
CC Dkt.No.88 - 326	4810
GEN Dkt.No.85 - 171	4776
GEN Dkt.No.87 - 107	4855
GEN Dkt.No.88 - 86	4808
GEN Dkt.No.88 - 372	4736
MM Dkt.No.85 - 216	4699
MM Dkt.No.85 - 298	4767
MM Dkt.No.86 - 144	4773
MM Dkt.No.86 - 270	4765
MM Dkt.No.87 - 73	4840
MM Dkt.No.87 - 104	4865
MM Dkt.No.87 - 244	4631
MM Dkt.No.87 - 258	4829
MM Dkt.No.87 - 276	4866
MM Dkt.No.87 - 302	4831
MM Dkt.No.87 - 313	4836
MM Dkt.No.87 - 347	4816
MM Dkt.No.87 - 376	4827
MM Dkt.No.87 - 396	4853
MM Dkt.No.87 - 442	4652
MM Dkt.No.87 - 444	4790
MM Dkt.No.87 - 452	4868
MM Dkt.No.87 - 471	4851
MM Dkt.No.87 - 479	4788
MM Dkt.No.87 - 480	4789
MM Dkt.No.87 - 481	4787
MM Dkt.No.87 - 602	4852
MM Dkt.No.88 - 50	4833
MM Dkt.No.88 - 75	4854
MM Dkt.No.88 - 79	4832
MM Dkt.No.88 - 182	4632
MM Dkt.No.88 - 303	4663
MM Dkt.No.88 - 340	4633
MM Dkt.No.88 - 342	4641
MM Dkt.No.88 - 343	4634
MM Dkt.No.88 - 344	4637
MM Dkt.No.88 - 346	4746
MM Dkt.No.88 - 347	4659
MM Dkt.No.88 - 348	4660
MM Dkt.No.88 - 349	4662
MM Dkt.No.88 - 352	4749
MM Dkt.No.88 - 353	4753
MM Dkt.No.88 - 354	4755
MM Dkt.No.88 - 355	4655
MM Dkt.No.88 - 356	4693
MM Dkt.No.88 - 357	4751
MM Dkt.No.88 - 358	4768
MM Dkt.No.88 - 359	4771
MM Dkt.No.88 - 360	4798
MM Dkt.No.88 - 361	4796
MM Dkt.No.88 - 362	4802
MM Dkt.No.88 - 366	4695
MM Dkt.No.88 - 367	4653
MM Dkt.No.88 - 368	4657
MM Dkt.No.88 - 369	4650
MM Dkt.No.88 - 370	4648
MM Dkt.No.88 - 374	4740
MM Dkt.No.88 - 379	4793
MM Dkt.No.88 - 380	4791
MM Dkt.No.88 - 1137	4697
MM Dkt.No.88 - 1138	4698
PR Dkt.No.87 - 5	4742
PR Dkt.No.88 - 191	4850
PR Dkt.No.88 - 373	4817

Table of Cases by Rulemaking Number
Volume 3
Issue 16

Rulemaking Number	Page	Rulemaking Number	Page
RM - 4961	4840	RM - 5970	4868
RM - 5206	4742	RM - 5973	4790
RM - 5253	4765	RM - 5980	4840
RM - 5286	4840	RM - 5981	4840
RM - 5291	4840	RM - 5982	4840
RM - 5314	4840	RM - 5983	4840
RM - 5320	4775	RM - 5984	4840
RM - 5334	4854	RM - 5985	4840
RM - 5339	4840	RM - 5986	4840
RM - 5380	4763	RM - 5989	4865
RM - 5381	4840	RM - 5990	4865
RM - 5411	4840	RM - 5998	4788
RM - 5421	4840	RM - 6000	4787
RM - 5425	4865	RM - 6003	4789
RM - 5488	4840	RM - 6011	4652
RM - 5508	4840	RM - 6058	4832
RM - 5612	4865	RM - 6091	4852
RM - 5615	4840	RM - 6105	4833
RM - 5698	4831	RM - 6221	4653
RM - 5699	4698	RM - 6260	4695
RM - 5712	4736	RM - 6264	4791
RM - 5716	4866	RM - 6276	4817
RM - 5796	4829	RM - 6282	4650
RM - 5839	4827	RM - 6286	4657
RM - 5891	4816	RM - 6311	4648
RM - 5920	4851	RM - 6324	4693
RM - 5955	4853	RM - 6354	4793
RM - 5961	4697	RM - 6396	4655

Table of Cases by City
Volume 3
Issue 16

City/State	Page	City/State	Page
Anacortes, WA	4777	Jupiter, FL	4695
Bastrop, TX	4816	Kilgore, TX	4840
Beaumont, TX	4768	Kirksville, MO	4632
Benton, AR	4840	Laurel, DE	4633
Burlington, VT	4749	Lenox, WV	4785
Burnet, TX	4816	Los Altos, CA	4846
Burnside, KY	4657	Lynnville, IL	4851
Calhoun, TN	4796	Madison, FL	4793
Clarksville, AR	4840	Mamou, LA	4865
Clifton, TX	4771	Marco, FL	4631
Crossville, TN	4755	Maurice, LA	4865
Dahlonega, GA	4693	Mena, AR	4840
Dalton, GA	4827	Merrill, WI	4829
Dardanelle, AR	4840	Minocqua, WI	4788
DeKalb, IL	4798	Mt. Morris, IL	4650
El Dorado, AR	4840	Murphy, NC	4693
Elkton, VA	4787	Narragansett Pier, RI	4637
Ellensburg, WA	4868	Nederland, TX	4865
Erath, LA	4865	New London, WI	4829
Foot Hood, TX	4834	New Orleans, LA	4751
Franklin Lakes, NJ	4859	Newberry, FL	4663
George West, TX	4697	Ocean Pines, MD	4641
Gilroy, CA	4846	Ocilla, GA	4765
Grand Rapids, MI	4802	Ontonagon, MI	4833
Gregory, TX	4853	Orlando, FL	4699
Groves, TX	4865	Ozark, AR	4840
Guadalupe, CA	4767	Palm Springs, CA	4831
Hampton, AR	4840	Panama City, FL	4854
Harrison, AR	4840	Parkersburg, WV	4790
Hastings, FL	4763	Peshtigo, WI	4789
Havana, FL	4793	Portage, MI	4746
Hayden, IA	4659	Richland, WA	4856
Homer, LA	4840	Rockmart, GA	4827
Hooks, TX	4840	Roseburg, OR	4852
Humbolt, TN	4753	Royston, GA	4660
Huntsville, AR	4840	Sallisaw, OK	4840
Idaho Falls, ID	4648	San Bruno, CA	4846
Indian Springs, NV	4655	San Jose, CA	4846
Irwin, CA	4834	Sausalito, CA	4846
Iuka, MS	4832	Savanna, IL	4650
Jennings, LA	4865	Seabrook, TX	4866
Jonesboro, AR	4791	Selma, AL	4653

City/State	Page
Sherwood, AR	4840
Silver City, NM	4662
Springfield, MO	4870
Stamford, TX	4652
Vinita, OK	4840
Wickenburg, AZ	4698

Subject Index
Volume 3
Issue 16

Subject	Page
Adjudication	
Orders or Notices	
New service v. expansion of existing service	4699, 4749
Pleadings, parties requested to file	4699
Program origination requirements	4699
Programming, specialized	4699, 4749,
Reconsideration, timeliness and	4632
Reopening of record	4699, 4749,
Amateur Radio Service (ARS)	
ARS - Licenses, station	
Mailing address furnished by licensee	4824
Broadcast Radio Services - General Rules	
Applications	
Eligible to sign an application, those	4740
Applications for authorization	
Conflicts in applications, agreement for removing	4740
Defective applications	4859
Multiple applications, no	4740
Signatories, those eligible to be	4859
Changes, renewals in existing stations	
Assignment or transfer of control, application for voluntary	4870
Construction permits	
Extension/replacement, application for	4777
Period of time for construction	4777
Operation of station	
Program tests	4777
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of	4763, 4765, 4657, 4655, 4693, 4695, 4866, 4787, 4790, 4793, 4832, 4831, 4851, 4852, 4840, 4865,
Distances between stations, minimum	4773

Subject	Page
Broadcasting - Noncommercial Educational FM	
Power considerations	
Signal strength contours, overlap of	4859
Broadcasting - TV Stations	
Allocations/assignments/licenses	
Table of assignments	4791
Carriers: Service Altered	
Extensions and supplements	
Applications, contents of	4761, 4762, 4782, 4783,
Common Carriers: Miscellaneous Rules	
Allocation of costs to regulated or non-regulated costs	4664
Enhanced services (computer) and customer-premises equipment	4809, 4757,
Communications Act of 1934	
Common Carriers	
Accounts, records, memoranda,forms of; depreciation charges	4664
Charges, schedules of	4673
Complaints to the commission	4647
Extension of lines, certificate for	4761, 4762, 4782, 4783,
Procedural and Administrative provisions	
Inquiry by Commission on its own motion	4740
Witnesses and depositions, provisions relating to proceedings-	4740
Radio, provisions relating to	
Applications;form of and conditions attached to licenses	4646, 4825,
Construction permits	4646, 4825,
Licenses, limitation on holding and transfer of	4785
Frequency Allocations and Radio Treaty Matters	
Allocation, assignment, and use of radio frequencies	
International and U.S. table of frequency allocations	4736
Maritime Services	
Frequencies	
Automated systems, table for	4736
Technical standards for coast and ship stations	
Transmitter power expressed in various terms, maximum	4690
Operational-Fixed Microwave Service, Private	
Technical standards	
Frequencies available, tables of assignments of	4742

Subject	Page
Practice and Procedure	
Application procedures, general	
Information furnished by applicants, changes in	4859
Common carriers: complaints, formal	
Supplemental complaints	4647
Common carriers: tariffs	
Filing, petitions related to new	4869
Information, general	
Rules, suspension, amendment, waiver	4645
Pleadings, briefs	
Extension of time, motions for	4644
Stay, cross-reference for a request for a	4631
Reconsideration/review of Commission action	
Actions by delegated authority, application for review of	4767
Private Land Mobile Radio Services	
Emergency communications	
Frequencies assignable, list of all	4817
Industrial radio services	
Business radio service, table of and reference coordinates for	4817
Land transportation radio services	
Taxicab radio service, table of frequencies for	4817
Policies governing the assignment of frequencies	
Facilities, sharing the use of	4745
Public Mobile Service	
Applications and licenses-filing requirements	
Technical content of applications	4856
Public land mobile service	
Frequencies, assignment of	4742
Radio Frequency Devices	
Lowpower specific devices: cordless telephones	
Provisions, interim	4774, 4775
TV interface devices	
Equipment authorization, requirements for	4855
Telecommunications Companies: Classes A and B	
Nonregulated activities	4664
Regulated accounts	4664
Transactions with affiliates	4664

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
(Boyd Enterprises, Inc.) (Humbolt, Tennessee)	4753
(David L. Robinson) (Calhoun, Tennessee)	4796
(Larry Langford) (Portage, Michigan)	4746
(Lawrence L. Bush, Jr.) (Clifton, Texas)	4771
(Ocean Waves Broadcasting) (Narragansett Pier, Rhode Island)	4637
(Oculus Broadcasting Corporation) (Royston, Georgia)	4660
(Richard Culpepper) (Grand Rapids, Michigan)	4802
(Tana S. Knetsch) (DeKalb, Illinois)	4798
(Texas Communications Limited) (Beaumont, Texas)	4768
(United Broadcasting of Idaho, Inc.) (Hayden, Idaho)	4659
(Whiteaker Communications) (Crossville, Tennessee)	4755
000.047 C.F.R. 1.773	4869
000.047 C.F.R. §69, Access Charges FOR RECORD ONLY	4837
000.073. Sub. C; Noncom. Ed. FM; concur. NTIA; military	4834
000.154(i), 000.154(j), 201, 203 and 403	4810
000.309 Action Upon Appl., Form of Conditions Attached to Li	4862
000.319 Construction Permits	4862
000.47 C.F.R. 064.702, Furnishing of CPE	4809
001.003 Suspension, Amendments, or Waivers	4645
001.003 Suspension, Amendments, or Waivers	4744
001.043 Request for Stay, Dismissed	4631
001.046 Motions for Extension of Time	4644
001.046 Motions for extension of time	4836
001.065 substantial and significant changes in information f	4859
001.115 Application for Review	4767
001.727 Motions	4647
001.743(d) Forfeiture	4848
001.773 Petitions for Susp. or Rejection of New Tariff	4815
002.106 Table of frequency allocations	4736
015.231 et. seq. Cordless Telephones.	4774
015.231 et. seq. Cordless Telephones.	4775
015.616 Equipment Authorization Requirements for TV Interfac	4855
022.015 Technical content of applications	4856
022.501(g)(2) Frequencies	4742
022.501(g)(2) Frequencies	4807
032.014 Regulated Accounts	4664
032.016 Changes in Accounting Standards	4645
032.016 Changes in Accounting Standards	4744
032.023 Nonregulated Accounts	4664
032.027 Transactions with Affiliates	4664
061.038; 001.045	4806
063.001 Contents of Applications	4761
063.001 Contents of Applications	4780
063.001 Contents of Applications	4781
063.001 Contents of Applications	4782
063.001 Contents of Applications	4783
063.001 Contents of Applications	4784
063.001 Contents of Applications	4785
064.702 Carrier-provided customer premises equip.	4779
064.702 Furnishing of Enhanced Services and Customer-Premise	4757

064.901 Allocation of Costs 4664
064.901 Allocation of Costs 4858
065.702(c) Measurement of Interstate Services Earnings 4805
069.004 Charges to be filed. 4674
073.1620 Program Tests 4777
073.202 FM Table of Allotments 4648
073.202 FM Table of Allotments 4650
073.202 FM Table of Allotments 4652
073.202 FM Table of Allotments 4653
073.202 FM Table of Allotments 4657
073.202 FM Table of Allotments 4693
073.202 FM Table of Allotments 4695
073.202 FM Table of Allotments 4697
073.202 FM Table of Allotments 4698
073.202 FM Table of Allotments 4763
073.202 FM Table of Allotments 4787
073.202 FM Table of Allotments 4788
073.202 FM Table of Allotments 4789
073.202 FM Table of Allotments 4790
073.202 FM Table of Allotments 4816
073.202 FM Table of Allotments 4827
073.202 FM Table of Allotments 4829
073.202 FM Table of Allotments 4831
073.202 FM Table of Allotments 4832
073.202 FM Table of Allotments 4833
073.202 FM Table of Allotments 4840
073.202 FM Table of Allotments 4851
073.202 FM Table of Allotments 4853
073.202 FM Table of Allotments 4865
073.202 FM Table of Allotments 4866
073.202 FM Table of Allotments 4868
073.202, FM Table of Allotments 4765
073.202, FM Table of Allotments 4852
073.207 Minimum distance separation between stations. 4773
073.3513(d) Signing of Applications. 4740
073.3514 content of applications 4859
073.3520 Multiple Applications. 4740
073.3525(a) Agreements for Removing Application Conflicts. 4740
073.3534 Application for extension of construction permit 4777
073.3540 Application for Voluntary Assignment or Transfer of 4870
073.3566 defective applications 4859
073.3598 Period of construction 4777
073.509 prohibited overlap 4859
073.606 TV Table of Allotments 4791
073.606 TV Table of Allotments 4854
080.215 Transmitter power 4690
080.385 Frequencies for automated systems 4736
090.075 Business Radio Service 4817
090.093 Taxicab Radio Service 4817
090.179(a) Shared use of radio stations 4745
090.555 Combined Frequency Listing 4817
094.063(d)(5)Interference protection ctireria for operationa 4807
094.065(a)(1) Frequencies 4742
094.065(a)(1) Frequencies 4807

097.043 Mailing address furnished by licensee 4824
300.005(C)(1) Organization and Functioning of the Comm. 4740
300.203 Schedules of Charges 4673
300.208 Complaints to the Commission 4647
300.208 Complaints to the Commission 4864
300.214 Extension of Lines 4761
300.214 Extension of Lines 4780
300.214 Extension of Lines 4781
300.214 Extension of Lines 4782
300.214 Extension of Lines 4783
300.214 Extension of Lines 4784
300.214 Extension of Lines 4785
300.220 Accounts, Records, and Memoranda; Deprecition Charge 4664
300.309 Action Upon Appl., Form of Conditions Attached to Li 4825
300.309 Action Upon Application 4646
300.309 Action upon applications; form and conditions attach 4859
300.310 Transfer of License 4785
300.319 Construction Permit 4646
300.319 Construction Permits 4777
300.319 Construction Permits 4825
300.403 Inquiry by Commission on its Own Motion 4740
300.409 General Prov. Relating to Proceedings Witness 4740
500.112 Air Hazard 4749
500.122 Cross-Interest 4699
500.128 Misrepresentation 4699
500.132 Financial Qualifications 4699
500.140 Comparative 4699
500.140 Comparative 4749
500.140 Comparative 4751
500.145 - Air Hazard 4632
500.150 Ultimate 4699
500.150 Ultimate 4749
500.150 Ultimate 4751
500.2XXX, SD (Kirksville, Missouri), MM Docket No. 88-182, F 4632
Computer III Requirements 4683
NPRM, FM B/C STAS. (Havana and Madison, FL), DA 88-1144 4793
NPRM, FM B/C STAS. (Indian Springs, NV), DA 88-1102 4655
Part 1 Practice and Procedure 4850
Part 68 Registered terminal equipment 4779
Part 94 Private Operational Fixed Microwave Service 4850

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-244

In re Applications of	
REBECCA RADIO OF MARCO	File No. BPH-8507110B
EMERALD SEA BROADCASTING, INC.	File No. BPH-850712OF
AFFIRMATIVE BROADCASTING CORPORATION	File No. BPH-850712TX
SHOWCASE COMMUNICATIONS, INC.	File No. BPH-850712U8
MARCO MINORITY ASSOCIATES	File No. BPH-850712UA
SUSAN G. & WILLIAM R. GASTON	File No. BPH-850712UE
MARCO SKYWAVE, INC.	File No. BPH-850712UH

For Construction Permit for a New FM Station on Channel 224A in Marco, Florida

ORDER

Adopted: July 20, 1988; Released: August 2, 1988

By the Review Board: BLUMENTHAL and ESBENSEN. Board Chairman MARINO absent.

1. On July 7, 1988, all the applicants in the captioned proceeding filed an appeal and request for certification, as well as a joint request for stay of the hearing proceeding below. By *Order*, FCC 88R-42, adopted July 13, 1988, we did certify the matter of the joint request for approval of settlement agreement to the Commission; however, we also indicated therein that in a "further order to follow shortly, [we] will resolve the merits of the pending stay request" *(Order*, para. 3).

2. However, we now note that the Presiding Officer in this proceeding, by *Order*, FCC 88M-2289, released July 18, 1988,has, on his own motion, continued without date (until the Commission acts on the matter certified) the previously scheduled hearings.

3. ACCORDINGLY, IT IS ORDERED, That the joint request for stay filed July 7, 1988 by all the applicants to this proceeding IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-182

In re Applications of

NORTHERN MISSOURI CHRISTIAN BROADCASTING, INC. File No. BPH-870615MX

For Construction Permit for a
New FM Station on Channel 300C1
in Kirksville, Missouri

Appearances

Thomas L. Root, on behalf of Northern Missouri Christian Broadcasting, Inc.; and *Brian Kilbane*, on behalf of Chief, Mass Media Bureau.

SUMMARY DECISION OF
ADMINISTRATIVE LAW JUDGE
JOSEPH CHACHKIN

Issued: July 21, 1988; Released: August 1, 1988

PRELIMINARY STATEMENT

1. Four applications were designated for hearing in this proceeding to select a permittee to construct a new FM station on Channel 300C1 in Kirksville, Missouri. Only the application of Northern Missouri Christian Broadcasting, Inc. (NMCB) remains. NMCB's application could not be granted because of an unresolved air hazard issue designated against it. *Hearing Designation Order*, DA 88-542, released May 2, 1988. On July 20, 1988, NMCB filed a Petition For Leave To Amend containing a determination of the Federal Aviation Administration (FAA) that its proposed tower will not constitute a hazard to air navigation. NMCB filed on the same date, a motion for summary decision on the air hazard issue in this case.

FINDINGS OF FACT

2. NMCB has received an FAA determination of no hazard to its proposed tower site. There remains no genuine issues as to any material fact in this proceeding. The designated air hazard issue is resolved in NMCB's favor.

CONCLUSIONS

3. The air hazard issue is resolved in NMCB's favor. There are no other basic qualifying issues pending against NMCB. NMCB's application is granted.

Accordingly, IT IS ORDERED, That the Petition For Leave To Amend, and the Motion For Summary Decision ARE GRANTED and the application of Northern Missouri Christian Broadcasting, Inc. for a construction permit for a new FM station 300C1 in Kirksville, Missouri IS GRANTED.[1]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

FOOTNOTE

[1] In the event exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-340

In re Applications of

GWENDOLYN GLADYS EVANS
Laurel, Delaware
Req: 1170 kHz, 5 kW, DA-D — File No. BP-860904AH

Stephen E. Brisker d/b/a RADIO 1170
Falmouth, Virginia
Req: 1170 kHz, 2.0 kW, DA-D, D — File No. BP-861229AC

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: June 20, 1988; Released: August 3, 1988

By the Chief, Audio Services Division

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Gwendolyn Gladys Evans (Evans) and Stephen E. Brisker d/b/a Radio 1170 (Brisker).

2. The engineering portion of the Evans application is missing the required site photographs. This omission must be corrected by an amendment filed with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

3. Brisker must correct Section V-A of FCC Form 301 to indicate that his application proposes four towers instead of five towers. This correction should be submitted in an amendment filed with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

4. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and population which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. IT IS FURTHER ORDERED, That Gwendolyn Gladys Evans file an amendment to correct the engineering deficiency in her proposal with the presiding Administrative Law Judge within 30 days of the release of this Order.

7. IT IS FURTHER ORDERED, That Stephen E. Brisker, d/b/a Radio 1170, file an amendment to correct the engineering deficiency in his proposal with the presiding Administrative Law Judge within 30 days of the release of this Order.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C.

9. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, the applicants shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 24, 1988,** file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-343

In re Applications of

Francisco Resto Torres d/b/a NAGUABO BROADCASTING COMPANY (hereafter NBC)	File No. BPH-861023MA
CESAR D. GONZALEZ (hereafter Gonzalez)	File No. BPH-861027MA
Victelio R. Martinez d/b/a EASTERN BROADCASTING (hereafter Eastern)	File No. BPH-861027MB
JORGE G. BLANCO GALDO (hereafter Galdo)	File No. BPH-861027ME
REYES RUIZ RIVERA (hereafter Rivera)	File No. BPH-861027MF
HECTOR NEGRONI CARTAGENA (hereafter Cartagena)	File No. BPH-861027MH
EFRAIN ARCHILLA-DIEZ (hereafter Archilla-Diez)	File No. BPH-861027MI
NAGUABO BROADCAST GROUP, INC. (hereafter Group)	File No. BPH-861027MJ

For a Construction Permit
for a New FM Station
in Naguabo, Puerto Rico
on Channel 225A (96.9 MHz)

HEARING DESIGNATION ORDER

Adopted: June 23, 1988; Released: August 3, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

PRELIMINARY MATTERS

2. *Short - spacing.* Pursuant to the *Report and Order* in MM Docket 85-209, 51 Fed. Reg. 30363, the Commission allocated Channel 225A to Naguabo, Puerto Rico, stipulating a 9.7 kilometer (6 mile) site restriction east of the city to avoid short-spacings to co-channel Class B station WTPM (Aguadilla, Puerto Rico) and to second-adjacent Class B station WORO (Corozal, Puerto Rico). Five (NBC, Galdo, Rivera, Arçhilla-Diez and Group) of the eight applicants in this proceeding do not comply with this restriction, proposing transmitter antenna sites short-spaced (from 1.8 to 3.4 kilometers) to the Aguadilla facility.

3. In mutually exclusive cases, the Mass Media Bureau will not designate a short-spaced application for hearing unless a material question of fact is raised as to the availability or feasibility of any and all fully-spaced sites. *See Clearlake Broadcasting Company*, 47 Fed. Reg. 47931 (1982). In the instant proceeding, the fully-spaced applicants concede (by their negative responses to Section V-B, Item 11 of FCC Form 301) that their proposed sites would not result in a 3.16 mV/m (70 dBU) signal over the entire community of license, without major terrain obstruction. The problem, as described by short-spaced applicant NBC, is that most of the possible fully-spaced sites lie within the Roosevelt Roads Naval Reservation, and "it is quite likely that none of the government's property would be available for a commercial communications facility." Significantly, the Navy has already rejected Cartagena's proposal to construct a 371-foot tower within one mile of Ostie Field. *Letter to Mr. Dan. J. Alpert from J. B. J. B. Venable, Public Works Officer / Department of the Navy*, dated January 8, 1987 (Attachment to Cartagena's "Supplement to Request for Waiver," filed January 14, 1987).

4. *City Coverage / Line Of Sight.* Our engineering analysis confirms an inextricable link in this proceeding between an applicant's location and its ability to satisfy the Commission's policy of requiring a minimum signal strength of 70 dBU over 80% of the community of license. *See Letter to Southwest Communications, Inc. from Dennis Williams, Acting Chief, FM Branch*, dated July 16, 1986, citing *John R. Hughes et al.*, 50 Fed Reg. 5679 (1985). Simply stated, the short-spaced applicants sacrifice spacing for coverage; the fully spaced applicants, coverage for spacing.[1] Since no fully-spaced applicant has been able to demonstrate (through diffraction studies or other means) compliance with the Commission's 80% standard, a substantial question exists concerning the technical feasibility of their proposals.[2] Accordingly, with a *Clearlake* exception clearly established, inclusion of the short-spaced applicants in the comparative phase of this proceeding is warranted. An issue will be specified to determine if circumstances warrant waiver, where appropriate, of the Commission's spacing and/or coverage rules.

NBC

5. Principal Francisco Resto Torres has indicated that he is employed as the General Sales Manager at WVJP-AM/FM, Caguas, Puerto Rico. Mr. Torres has indicated that he will terminate his employment by and his connections with the Caguas stations in the event NBC's application is granted. Accordingly, an appropriate condition will be specified below.

EASTERN

6. In *FM Transmitter Site Map Submission Required by FCC Forms 301 and 340*, 1 FCC Rcd 381 (1986), the Commission reiterated the map requirement contained in the *Public Notice*, Mimeo 3693, released April 5, 1985, as incorporated by reference in the *Report and Order* in Docket 84-750. [3] The Commission found that because the *Public Notice* had not been properly published in the *Federal Register*, the public had not been adequately informed of the map requirement. Eastern's transmitter site map does not comply with the Commission's requirements. Since Eastern's application was filed prior to the November 4, 1986 release of the Commission's reiteration of the site map requirements, it will be allowed to amend its application by submitting a map in accordance with the Commission's requirements to the presiding Administrative Law Judge within 30 days of the release of this Order.

ARCHILLA - DIEZ

7. On November 9, 1987, Archilla-Diez petitioned for leave to amend his application to specify the same short-spaced site proposed by NBC. The last day for filing minor amendments as of right in this proceeding was April 9, 1987. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

OTHER MATTERS

8. *Pleadings*. On November 25, 1986, Rivera filed a motion to dismiss NBC's application, alleging that NBC's proposed transmitter location off Hwy 979 near Ceiba, Puerto Rico would fail "to place signal of 70 dBU over Naguabo as required by Section 73.315(a) of the Commission's Rules." NBC amended its application on January 14, 1987 to specify a transmitter location on Cerro Corozal, near Ceiba. Accordingly, Rivera's motion will be dismissed as moot.

9. On December 11, 1986, Cartagena filed a petition to dismiss Group's application, alleging that the different antenna heights above average terrain (HAAT) listed in Section V-B, Item 6 of Group's tendered application violated the "hard look" processing procedures detailed in the *Report and Order* in MM Docket 84-750, 58 RR 2d 776 (1985). We note, however, that Group corrected the typographical error by amendment filed November 20, 1986. Cartagena's petition will therefore be dismissed as moot.

10. On December 4, 1986, Rivera filed a motion to dismiss Eastern's application, alleging that Eastern's proposed site would fail "to place a signal of 70 dBU over Naguabo as required by Section 73.315(a) of the Commission's Rules." On September 11, 1987, NBC filed petitions for reconsideration of the acceptance of the applications filed by Gonzalez, Eastern, Archilla-Diez and Group. NBC alleged that each applicant had violated the public inspection and local notice requirements of 47 C.F.R. §§ 73.3526 and 73.3580, respectively. The arguments raised in these petitions are in essence requests to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for Processing of Contested Broadcasting Applications : Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202 (1979) directed the deletion of all issue pleadings, the matters sought to be raised in the petitions will not be considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to 47 C.F.R. § 1.229.

11. *Section V - B / Item 6*. Our engineering analysis reveals discrepancies in the antenna heights provided by Gonzalez and Galdo in their respective responses to Section V-B, Item 6 of FCC Form 301. In his response to Section V-B, Item 6, Gonzalez lists his HAAT as 378 feet. This figure conflicts, however, with the 501 feet derived from calculating the HAAT from the eight radials given in Section V-B, Item 15. Galdo lists his proposed radiation center above mean sea level as 573 feet in Section V-B, Item 6; our analysis of his antenna sketch shows this figure as 473 feet. Further, pursuant to 47 C.F.R. § 73.313(d)(2), the 135 degree radial should be included in Galdo's HAAT calculation since the predicted 50 uV/m contour encompasses Vieques Island. These discrepancies do not render the applications unacceptable for filing since the correct information can be "confidently and reliably" derived utilizing information contained in the application as a whole, and neither the discrepancies nor the actual figures would result in violations of our technical acceptance rules. We note that Class A stations in Puerto Rico may, pursuant to 47 C.F.R. § 73.211(b)(3)(ii), operate with 3 kilowatts effective radiated power with antenna heights above average terrain up to 335 meters (1100 feet). Both applicants will be required to file the appropriate amendment of this item with the presiding Administrative Law Judge.

12. *Air Hazard*. On January 23, 1987, the Federal Aviation Administration (FAA) determined that Gonzalez's proposed tower site on State Route 3 in Ceiba would constitute a hazard to air navigation (Study No. 86-SJU-133-OE). On May 27, 1987, the FAA canceled Eastern's requested tower site at the Las Gaviotas Project in Fajardo. Attempts to obtain Cartagena's FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, an issue with respect to each will be included and the FAA made a party to the proceeding.

13. *Areas and Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

14. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

15. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. (a) To determine whether the proposals of NBC, Galdo, Rivera, Archilla-Diez and Group are consistent with the minimum separation requirements of Section 73.207 of the Commission's Rules; (b) to determine whether the proposals of Gonzalez, Eastern, Galdo and Cartagena would provide coverage of the city sought to be served, as required by Section 73.315(a) of the Commission's Rules; and (c) in light of the evidence adduced concerning (a) and (b), above, whether circumstances exist which warrant waivers of the appropriate rule sections.

2. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Gonzalez, Eastern and Cartagena would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

16. IT IS FURTHER ORDERED, That, in the event of grant of NBC's application, Francisco Resto Torres will be required to divest himself of all interest in and sever all connections with stations WVJP-AM/FM, Caguas, Puerto Rico, before the commencement of program test authority.

17. IT IS FURTHER ORDERED, That Eastern shall submit a transmitter site map complying with the Commission's requirements as referenced in paragraph 7 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

18. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Archilla-Diez on November 9, 1987 IS GRANTED and the accompanying amendment IS ACCEPTED.

19. IT IS FURTHER ORDERED, That the motion to dismiss filed by Rivera against NBC and the petition to dismiss filed by Cartagena against Group ARE DISMISSED AS MOOT, and that the motion to dismiss filed by Rivera against Eastern and the petitions filed by NBC for reconsideration of the acceptance of the applications filed by Gonzalez, Eastern, Archilla-Diez and Group ARE DENIED.

20. IT IS FURTHER ORDERED, That Gonzalez and Galdo shall file amendments of their responses to Section V-B, Item 6 as described in paragraph 12 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

22. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

23. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c) in person or by attorney, within 20 days of the mailing of this Order, not later than **August 24, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Galdo is the sole short-spaced applicant with an acknowledged coverage problem, claiming two major obstructions to the proposed signal result in a signal strength between 65.68 to 68.28 dBU over the community of license.

[2] Cartagena's proposal to "fill-in" any deficiency in its coverage with an FM translator operating on the third adjacent channel is, therefore, premature. No evidence has been established at this stage that the public interest would be enhanced by a unique solution ensuring satisfactory coverage to the community of license. *See WSTE - TV, Inc.*, 75 FCC 2d 52, 63 (1979).

[3] In addition to the site map requirements specified in the application form itself, the Commission's *Public* Not ic e required that the map contain at least two USGS coordinate markings, one on either side of the marked site, placed along the printed margins of both axes.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-344

In re Applications of

OCEAN WAVES BROADCASTING (hereafter Waves)	File No. BPH-870311ME
David C. Grady & James Durkin d/b/a SOUTH COUNTY BROADCASTING (hereafter County)	File No. BPH-870312MG
JOHN CORREA (hereafter Correa)	File No. BPH-870312MH
MOLLY A. WALTMAN (hereafter Waltman)	File No. BPH-870313MA
CYNDIE ANN RAKOVAN (hereafter Rakovan)	File No. BPH-870313MS
Susan L. Kenary d/b/a NARRAGANSETT RESORT RADIO (hereafter Resort)	File No. BPH-870313NA
SOUTH SHORE BROADCASTING, INC. (hereafter Shore)	File No. BPH-870313NF
JOHN J. FULLER (hereafter Fuller)	File No. BPH-870313NH
WILTSHIRE BROADCAST CO. (hereafter Wiltshire)	File No. BPH-870313NI
BRENDA R. TANGER (hereafter Tanger)	File No. BPH-870313NJ
ZACHS NARRAGANSETT BROADCASTING PARTNERSHIP (hereafter Zachs)	File No. BPH-870313NL
C. G. ASSOCIATES OF NARRAGANSETT (hereafter CGA)	File No. BPH-870313NU
OCEAN VENTURE BROADCASTING COMPANY (hereafter Venture)	File No. BPH-870313MZ (PREVIOUSLY DISMISSED)

For Construction Permit for a
New FM Station on Channel 274A (102.7 MHz)
in Narragansett Pier, Rhode Island

HEARING DESIGNATION ORDER

Adopted: June 23, 1988; Released: August 3, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Preliminary matters.* On March 13, 1987, Venture tendered an application to serve Narragansett Pier, Rhode Island, on Channel 274A. That application and the March 31, 1987 amendment thereto were returned as unacceptable for filing by staff letter on August 25, 1987 (reference 8920-TWG). The amendment was returned because the West Longitude coordinates of Venture's amended transmitter site as plotted on its topographic site map, 71' 29' *05* ", do not agree with the West Longitude coordinates reported in Section V-B, Item 2 of the amendment and in the engineering statement attached thereto, 71' 29' *08* ". The application was returned because its originally-specified transmitter site is 11.6 km short-spaced to first adjacent channel station WCRB(FM), Waltham, Massachusetts. On October 2, 1987, Venture filed a petition for reconsideration (petition) of the return of its application and amendment and of the denial of its request for waiver of the minimum distance separation rule, 47 C.F.R. § 73.207(a), and requested reinstatement *nunc pro tunc*. The petition included a curative amendment containing a corrected topographic site map. An erratum to the petition was filed on October 5, 1987.

3. In its petition, Venture states that it misplotted its new site on the topographic site map submitted in its amendment. It argues that the accompanying description of the location of the site included in the amendment indicates that the coordinates listed in Section V-B are the correct ones and, thus, that the coordinate discrepancy did not prevent the staff from determining that the amendment was in compliance with the Commission's spacing, coverage, and other requirements.

4. In its *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19,936 (May 13, 1985), the Commission adopted a "hard look" approach as to certain critical elements that are essential to a determination that an application is "substantially" complete. This approach benefits the public interest by expeditiously authorizing new service. Further, in Appendix D, the Commission stated that the absence of the geographic coordinates, *to the nearest second*, could prevent a determination of acceptability and thus render the application not substantially complete. In the present case, the inconsistencies in West Longitude coordinates make it impossible to determine the veracity of the site availability certification, the environmental impact statement, the information supplied for Federal Aviation Administration (FAA) approval, and the distance from the proposed site to other proposed or

existing broadcast facilities and to the community of license necessary to determinations of mutual exclusivity and compliance with spacing rules. The exact geographic location is also crucial to determining whether protection must be afforded to Commission monitoring facilities and to radio quiet zones, to marking the center of the "blanketing" area, and to analyzing a proposal's environmental and electromagnetic effects. Furthermore, the *Report and Order* specifically states that resubmission of an unacceptable application with a corrective amendment will not gain it reacceptance. *See* 47 C.F.R. § 73.3522(a). *See also Nan E. Carlisle & Jitendra R. Patel*, 3 FCC Rcd 2676 (1988).

5. Venture also argues that it is entitled to a hearing on its request for waiver of § 73.207(a) contained in its originally-filed application. Venture states that its 11.6 km short-spacing is *de minimis* and it is thus not required to show the unavailability of non-short-spaced sites. However, only short-spacings of 1.6 km or less are considered to be *de minimis* and thus Venture's waiver request was properly denied. *See Kenter Broadcasting Company*, 62 RR 2d 1573 (1986), *aff' d*, No. 85-1340 (D.C. Cir. Apr. 28, 1987). Furthermore, since Venture failed to adequately justify grant of the requested waiver, it is not entitled to an evidentiary hearing as a matter of law. *See US v. Storer Broadcasting Co.*, 351 US 192, 205 (1956). Accordingly, Venture's petition for reconsideration will be denied and its application will be dismissed.

6. *County*. On April 23, 1987, the Commission received a letter from James T. Beattie, Chief of the Coastal Resources Division of the Department of Environmental Management of the State of Rhode Island and Providence Plantations (state), objecting to County's proposal to locate its transmitter on state-owned property. This letter will be treated as an informal objection pursuant to 47 C.F.R. § 73.3587. In its application filed March 12, 1987, County had certified its reasonable assurance that the site would be available. On November 19, 1987, County's counsel sent a letter to the Commission stating that the site was no longer available. Accordingly, the state's informal objection will be granted and appropriate issues will be specified to determine whether County had reasonable assurance of the availability of its specified transmitter site and, if not, whether it made misrepresentations to the Commission. Furthermore, the petition to deny and petition to dismiss County's application filed by Fuller on June 2, 1987, and September 30, 1987, respectively, will be dismissed as moot.

7. County filed an amendment to its application on November 19, 1987, to report the loss of its transmitter site. On December 17, 1987, and January 29, 1988, County submitted petitions for leave to amend and amendments to its application to move to a new site. The November 19, 1987 amendment is unacceptable for failure to include the signature of a party to the County application. Accordingly, the amendment will be returned pursuant to 47 C.F.R. § 73.3513. The December 17, 1987 and January 29, 1988 amendments were filed subsequent to the amendment-as-of-right period and thus cannot be accepted absent a showing of good cause. *See* 47 C.F.R. § 73.3522(a)(6). In light of the issues to be specified with respect to the availability of County's site detailed in the preceding paragraph, the staff is unable to determine whether such good cause has been demonstrated. However, that portion of these two amendments which updates the employment of County's principals will be considered pursuant to 47 C.F.R. § 1.65. Accordingly, the petitions for leave to amend will be denied, and the amendments will be accepted only to the extent indicated above.[2]

8. In its January 29, 1988 amendment, County reports that its general partner, David C. Grady, is director of client services for Federal Communications Corp., licensee of WHJJ and WHJY(FM), Providence, Rhode Island, and that he will terminate this employment should County's instant application be granted. A condition reflecting this commitment will be specified below.

9. *Shore*. Title 47 C.F.R. § 73.1125 requires that the main studio of an FM station be located within the station's proposed 3.16 mV/m contour, but that upon a showing of good cause it may be located outside that contour. In its response to Section V-B, Item 12 of FCC Form 301 (1985 ed.), Shore states that its main studio will be at a location to be determined, with no indication that the determination would be limited to sites within the pertinent contour. Under these circumstances, the applicant will be required to file with the presiding Administrative Law Judge, within 30 days of the release of this Order, either an amended response to the above-referenced item and/or, if applicable, a showing of good cause should it propose to locate its main studio outside the 3.16 mV/m contour, or an appropriate issue will be specified by the Judge.

10. *Wiltshire*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and from Wiltshire have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Wiltshire would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

11. *Zachs*. On November 5, 1987, Zachs submitted a corrective engineering amendment to its application. Zachs failed to include, however, a showing of good cause for acceptance of this amendment which was filed subsequent to the amendment as-of-right period. *See* 47 C.F.R. § 73.3522(a)(6). Accordingly, the amendment will be returned without consideration. [3]

12. *CGA*. Fuller filed a petition to dismiss (petition) CGA's application on April 18, 1988, alleging that CGA's 50% general partner, Carl Grande, had filed inconsistent applications in violation of the Commission's multiple ownership rules. Fuller states that Carl Grande is a 51% limited partner in Stonington Communications, L.P. (Stonington), applicant for a new FM station in Pawcatuck, Connecticut (File No. BPH-880301NP), filed March 1, 1988, and that the 1 mV/m contour of this proposal overlaps the 1 mV/m contour of CGA's proposal. We note, however, that in response to Section II, Item 3(a) of FCC Form 301 (1986 ed.), Stonington certified that its limited partners would not be involved in any material respect in the management or operation of its proposed station. Pursuant to *Multiple Ownership Rules* (*Ownership Attribution*), 97 FCC 2d 997 (1985), *recon. granted*, 58 RR 2d 604 (1985), *recon. of later Order granted in part*, 1 FCC Rcd 802 (1986), we conclude that Carl Grande and, thus, CGA have no attributable interest in Stonington's application.[4] Accordingly, CGA's application for Narragansett Pier, Rhode Island, and Stonington's application for Pawcatuck, Connecticut, are not inconsistent, and Fuller's petition will be denied.

13. Further, in its May 23, 1988 amendment, CGA reports Carl Grande's interest in Stonington's application for a new FM station in Pawcatuck, Connecticut, and

states that he will divest this interest should CGA's instant application be granted. A condition reflecting this commitment will be specified below.

14. *Other matters.* Engineering study of the coverage maps and of the eight primary radials (required for the determination of the antenna height above average terrain (HAAT)) indicates that the applicants listed below improperly excluded the 180^0 radial. Pursuant to 47 C.F.R. § 73.313(d)(2), applicants must include a radial when the entire 3 to 16 km portion lies over water if land within United States boundaries is encompassed within the 50 uV/m contour. We note that Block Island falls near the 180^0 radial and is within the 50 uV/m contour. Accordingly, the 180^0 radial should have been included in the determination of HAAT.

APPLICANTS: County, Correa, Waltman, Rakovan, Shore, Wiltshire, Tanger, Zachs, and CGA.

15. In addition to the noted 180^0 radial deficiency, the following applicants similarly failed to include one or more of the 45^0, 90^0 and/or 225^0 radials which are also necessary for proper HAAT calculation.

APPLICANTS: Correa, Rakovan, Zachs, and CGA.

16. Furthermore, the 135^0 radial does not encompass any United States land within the 50 uV/m contour and should not be included in HAAT computations. Therefore, the following applicants that used the 135^0 radial for their HAAT calculations are not in compliance with § 73.313(d)(2).

APPLICANTS: Waves, Resort.

17. However, we acknowledge that § 73.313(d) is ambiguous as to how to interpret whether the 50 uV/m contour "encompasses" land area in the United States and, therefore, applicants reading this rule may have failed to come to the correct conclusion. Accordingly, we find that the HAAT computation discrepancies do not warrant the return of these applications. We will require, however, that the noted applicants submit amendments to correct these deficiencies to the presiding Administrative Law Judge within 30 days of the release of this Order. Additionally, to the extent that the petitions to deny filed by Fuller against Correa, Zachs, and CGA address matters related to the HAAT calculations, they will be dismissed as moot.

18. Fuller also filed petitions to deny against the applications of Waves, Correa, Wiltshire, and Zachs, disputing their publication of local public notice and/or certification of site availability. These petitions are essentially petitions to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications* ; *Amendment of Part 1 of the Commission's Rules*, 72 FCC 2d 202 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in this petition have not been considered. Thus, with regard to the allegations raised in the noted pleadings, an opportunity to raise these allegations will be afforded post-designation pursuant to 47 C.F.R. § 1.229. Accordingly, the petitions to deny will be denied.

19. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Rakovan	May 17, 1988.
Shore	June 1, 1988.
Wiltshire	September 16, 1987; March 30, 1988.
Tanger	August 7, 1987; August 31, 1987; February 1, 1988.
Zachs	October 2, 1987.
CGA	May 23, 1988.

20. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

21. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

22. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1(a). To determine whether County had reasonable assurance that its specified transmitter site would have been available to it.

1(b). To determine, in light of the facts and circumstances adduced pursuant to issue 1(a) above, whether County timely apprised the Commission of changed circumstances relating to the availability of its site pursuant to 47 C.F.R. § 1.65.

1(c). To determine, in light of the facts and circumstances adduced pursuant to issues 1(a) and 1(b) above, whether County misrepresented facts to or concealed information from the Commission.

1(d). To determine, in light of the facts adduced pursuant to the foregoing issues, whether County possesses the basic qualifications to be a Commission licensee.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Wiltshire would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

23. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Venture IS DENIED, and its application IS DISMISSED.

24. IT IS FURTHER ORDERED, That the informal objection filed by James T. Beattie, Chief, Coastal Resources Division, Department of Environmental Management of the State of Rhode Island and Providence Plantations, IS GRANTED.

25. IT IS FURTHER ORDERED, That, in accordance with paragraph 7 hereinabove, County's petitions for leave to amend ARE DENIED and its November 19, 1987 amendment IS RETURNED.

26. IT IS FURTHER ORDERED, That in the event of a grant of County's application, the construction permit shall be conditioned as follows:

> Prior to the commencement of program test authorization, permittee shall certify to the Commission that David C. Grady has resigned his position with Federal Communications Corp., licensee of WHJJ and WHJY(FM), Providence, Rhode Island.

27. IT IS FURTHER ORDERED, That, in accordance with paragraph 9 hereinabove, Shore shall file an amendment to its application with the presiding Administrative Law Judge within 30 days of the release of this Order.

28. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

29. IT IS FURTHER ORDERED, That Zach's November 5, 1987 amendment IS RETURNED.

30. IT IS FURTHER ORDERED, That in the event of a grant of CGA's application, the construction permit shall be conditioned as follows:

> Prior to the commencement of program test authorization, permittee shall certify to the Commission that Carl Grande has divested his interest in Stonington Communications, L.P., applicant for a new FM in Pawcatuck, Connecticut.

31. IT IS FURTHER ORDERED, That, in accordance with paragraphs 14 through 17 hereinabove, the following applicants shall submit amendments to their applications to the presiding Administrative Law Judge within 30 days of the release of this Order: Waves, County, Correa, Waltman, Rakovan, Resort, Shore, Wiltshire, Tanger, Zachs, and CGA.

32. IT IS FURTHER ORDERED, That, in accordance with paragraphs 6, 12, 17, and 18 hereinabove, the petitions to deny filed by Fuller against County and CGA and the petition to dismiss filed by Fuller against County ARE DISMISSED AS MOOT, and the petition to dismiss filed by Fuller against CGA and the petitions to deny filed by Fuller against Waves, Correa, Wiltshire, and Zachs ARE DENIED.

33. IT IS FURTHER ORDERED, That, in accordance with paragraphs 7 and 19 hereinabove, the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated: County, Wiltshire, Rakovan, Shore, Tanger, Zachs, and CGA.

34. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

35. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **August 24, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

36. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The application of Manuel Angelo (File No. BPH-870310MJ) was dismissed December 10, 1987, the application of the Amerizine Company, Inc. (File No. BPH-870312MB) was dismissed February 19, 1988, and the application of John Leverty and Partners (File No. BPH-870313ME) was dismissed March 16, 1988, pursuant to the applicants' requests. Additionally, the application of FM Narragansett Limited Partnership (File No. BPH-870313NK) was dismissed on December 29, 1987, and the application of Lighthouse FM Limited Partnership (File No. BPH-870313NT) was dismissed February 5, 1988.

[2] The oppositions to County's petitions for leave to amend and amendments filed by Resort on December 23, 1987, and by Fuller on January 11, 1988, and February 4, 1988, ARE DISMISSED AS MOOT.

[3] The opposition to the amendment filed by Fuller on November 12, 1987, IS DISMISSED AS MOOT.

[4] Furthermore, Carl Grande's interests in CGA's and Stonington's applications do not pose a violation of the Commission's cross-interest policy since Fuller has not shown that Narragansett Pier, Rhode Island, and Pawcatuck, Connecticut, are in the same community or serve substantially the same market. *See Reexamination* of the Commission's Cross-Interest Policy, 2 FCC Rcd 3699, 3700 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-342

In re applications of

STEGUS CORPORATION (hereafter Stegus)	File No. BPH-870330MQ
GENESIS COMMUNICATIONS, INC. and JUDITH L. RANDOLPH (hereafter Genesis)	File No. BPH-870331MI
OCEAN PINES FM PARTNERSHIP (hereafter OPFMP)	File No. BPH-870331NQ
BRIAN CASEY (hereafter Casey)	File No. BPH-870331OD
WILTSHIRE BROADCAST COMPANY (hereafter Wiltshire)	File No. BPH-870331OK
HARTKE COMMUNICATIONS CORP. (hereafter Hartke)	File No. BPH-870331PB
JOHN GEOFFREY WRIGHT (hereafter Wright)	File No. BPH-870406KD
OCEAN PINES LPB BROADCAST CORP. (hereafter LPB)	File No. BPH-870406KF
MALCOLM KAHN, GEORGE V. DELSON, ALLEN SKOLNICK & SAUL HERTZIG d/b/a OCEAN PINES BROADCASTING COMPANY (hereafter Kahn)	File No. BPH-870406KH
THE JOHNS HOPKINS BROADCASTING FOUNDATION (hereafter Johns Hopkins)	File No. BPED-870406MA
OWEN P. MILLS & JOHN A. BORSARI, d/b/a OCEAN PINES BROADCASTING ASSOCIATES (hereafter Mills)	File No. BPH-870330MP (DISMISSED HEREIN)
ALEXANDER W. SOROKA d/b/a OCEAN PINES RADIO COMPANY (hereafter Soroka)	File No. BPH-870406KC (DISMISSED HEREIN)

For a Construction Permit For a New FM Facility in Ocean Pines, Maryland On Channel 246A

HEARING DESIGNATION ORDER

Adopted: June 24, 1988 **Released: August 3, 1988**

By the Chief, Audio Services Division,

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. On December 28, 1987, Soroka filed a motion to dismiss its application for a new FM facility in Ocean Pines, Maryland. That motion will herein be granted.

3. *Genesis*. Our records indicate that Genesis filed an engineering amendment on June 29, 1987. Attempts to locate that amendment, however, have been unsuccessful. Furthermore, attempts to contact the applicant to request a copy of the amendment have been unsuccessful as the applicant lists an incorrect phone number by which to be contacted. The applicant will therefore be required to resubmit the amendment with the presiding Administrative Law Judge within 30 days of the release of this Order and to submit an amendment correcting the phone number listed for contact.

4. *Mills*. An engineering study has revealed a discrepancy between the value for the antenna height above average terrain (HAAT) listed in Section V- B, Item 6, of Mills' FCC Form 301, and the average of the eight radials listed in Section V-B, Item 15. Specifically, a HAAT value of 102.6 meters is obtained when calculating the HAAT using the eight radials as opposed to the HAAT value of 100 meters listed in Section V-B, Item 6 of Mills' application. The effective radiated power (ERP) value of 3.0 kilowatts in combination with the HAAT value of 102.6 meters exceeds the maximum permitted for a Class A facility pursuant to 47 C.F.R. § 73.211. Accordingly, Mills' application was inadvertantly accepted for filing and pursuant to 47 C.F.R. §§ 73.3564 and 0.283, Mills' application will be dismissed herein. *Cf. Kerrville Radio*, 2 FCC Rcd 3441, 3442 (1987).

5. *OPFMP*. In Exhibit 2, filed as a response to Section II, Items 6 and 7, OPFMP lists the other broadcast interests of Robert Evan Wilkes. However, Mr. Wilkes is not named as a partner of OPFMP in Exhibit 1, filed as a

response to Section II, Item 5. OPFMP will therefore be required to file a clarifying amendment with the presiding Administrative Law Judge within 30 days of the release of this Order specifying the status of Mr. Wilkes.

6. *LPB*. Dr. Leonard Berger is the 100% shareholder of LPB. Prior to filing the LPB application on April 6, 1987, Dr. Berger was also a limited partner of Fenwick Island Broadcast Limited Partnership I (File No. BPH-850712ZD) (FIP1), an applicant for a new FM facility in Fenwick Island, Delaware. (MM Docket No. 87-236) On April 2, 1987, Dr. Berger divested his limited partnership interest in the FIP1 application. On November 23, 1987 the following issues were added by the presiding Administrative Law Judge against FIP1 in the ongoing Fenwick Island proceeding:

(a) To determine whether Leonard Berger, M.D., is the real party in interest to the application of Fenwick Island Broadcast Limited Partnership 1;

(b) To determine whether, in light of Dr. Berger's interest in an application for a construction permit for a new FM broadcast station at Ocean Pines, Maryland, and the existence of an overlap of the 1 mV/m contours of the Ocean Pines and Fenwick Island proposals, the continued prosecution of the Fenwick Island application violates the provisions of Section 73.3518 of the Commission's Rules prohibiting inconsistent applications; and

(c) To determine in light of the evidence adduced under the foregoing issues whether Fenwick Island Broadcast Limited Partnership 1 possesses the basic qualifications required of a Commission licensee.

FCC 87M-3020. Accordingly, in the event a construction permit is awarded to LPB as a result of this proceeding, its grant shall be without prejudice to whatever action, if any, the Commission may deem appropriate in light of the outcome of the above issue.

7. *Air Hazard*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and applicants Genesis and Wright have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Genesis and Wright would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

8. *Other Matters*. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Wiltshire	September 16, 1987, March 30, 1988
LPB	December 21, 1987

9. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Genesis and Wright, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

12. IT IS FURTHER ORDERED, That the application filed by Soroka IS HEREBY DISMISSED upon the applicant's own motion.

13. IT IS FURTHER ORDERED, That Genesis resubmit its engineering amendment of June 29, 1987, and submit an amendment correcting the phone number of the applicant with the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That the application filed by Mills IS HEREBY DISMISSED.

15. IT IS FURTHER ORDERED, That OPFMP is required to submit a clarifying amendment with the presiding Administrative Law Judge within 30 days of the release of this Order specifying whether Robert Evan Wilkes is a partner of OPFMP.

16. IT IS FURTHER ORDERED, That, in the event a construction permit is awarded to LPB as a result of this proceeding, its grant shall be without prejudice to whatever action, if any, the Commission may deem appropriate in light of the outcome of the real party in interest issue added against Dr. Berger in the Fenwick Island, Delaware proceeding (MM Docket No. 87-236).

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by LPB and Wilshire ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

19. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the

Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

20. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 24, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AUDIO ENTERPRISES, INC., File No. ENF-88-04

Apparent Liability for Forfeiture

ORDER

Adopted: July 21, 1988; Released: August 1, 1988

By the Chief, Common Carrier Bureau:

1. On July 13, 1988, Audio Enterprises filed a motion for an extension of time in which to respond to the Notice of Apparent Liability (notice) in the above-captioned proceeding. Audio Enterprises claims that this extension is necessary because of a six-day delay between the release of the notice and receipt by Audio Enterprises, the complexity of the issues raised by the notice, other legal obligations of counsel, and previous vacation plans.

2. It is the policy of the Commission not routinely to grant extensions of time. Section 1.46(a) of the Commission's rules, 47 C.F.R. § 1.46(a). However, to the extent that good cause for an extension is demonstrated, we may consider granting more time. *See* Public Notice, Motion for Extension of Time before the Common Carrier Bureau, 44 Rad. Reg. 2d (P&F) 96 (1978). Our criteria for granting such requests are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay.

3. Generally, good cause is not demonstrated where counsel or parties are unavailable due to other litigation or planned vacations. *Id.* Therefore, Audio Enterprises' indication that counsel is involved in other litigation and has long-standing vacation plans does not demonstrate sufficient cause for granting an extension of time. However, an extension of time may be appropriate where it is shown that the matter is unusually complex and that additional time is necessary to provide the Commission with an adequate pleading.

4. In view of the serious nature of the findings in the notice, we believe it is important to move ahead expeditiously and avoid any undue delay. However, a brief extension of time will not significantly slow the Commission's deliberations. Therefore, in the interest of permitting the development of a thorough response to the notice, we believe that a two-week extension of time would be reasonable.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(j) and 5(c) of the Act, 47 U.S.C. §§ 154(j), 155(c), and authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, a two- week extension of time IS GRANTED. Audio Enterprises is directed to respond to the Notice of Apparent Liability no later than August 19, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

BELLSOUTH AAD 8-1926
SOUTHWESTERN BELL
NYNEX AMERITECH
PACIFIC TELESIS
US WEST
Statement of Financial Accounting
Standards No. 96, Accounting for
Income Taxes

ORDER

Adopted: July 21, 1988; Released: August 1, 1988

By the Chief, Common Carrier Bureau:

1. On May 9, 1988, in accordance with Section 32.16 of the Commission's rules, BellSouth Corporation, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth), filed notice of an intention to adopt Statement of Financial Accounting Standards No. 96 (SFAS-96), "Accounting for Income Taxes", which was adopted by the Financial Accounting Standards Board (FASB) in December 1987. Since receiving BellSouth's notification, the Bureau has received similar filings from Southwestern Bell Telephone Company (Southwestern Bell); New England Telephone and Telegraph Company and New York Telephone Company (NYNEX); Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, the Ohio Bell Telephone Company and Wisconsin Bell, Inc. (Ameritech); Pacific Bell and Nevada Bell (Pacific Telesis); and the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West).

2. Section 32.16, Changes in Accounting Standards, requires carriers to apply new standards adopted by the FASB and provides for automatic Commission approval of a new standard unless the Commission notifies carriers within 90 days after receiving notice of intention to follow a new standard that the new standard should not be adopted. Section 32.16 requires carriers to file not only a notice of intention to follow a new standard but also a revenue requirement study analyzing the effects of the new standards for the current year and a projection for three years.

3. SFAS-96 supersedes earlier guidance set out in Accounting Principles Board Opinion No. 11 (APB-11). While SFAS-96 retains the basic concept of comprehensive interperiod income tax allocation, it departs from the "deferred" method of income tax accounting as set forth in APB-11 and prescribed in Section 32.18 of the Commission's rules and requires the use of the "liability" method instead. Among other things, the "liability" method would require balance sheet recognition of tax liabilities not currently recognized and would require adjustments of the liabilities to reflect the effects of tax rate changes.

4. SFAS-96 accounting could require the addition of new accounts to Part 32 and may raise rate base issues that could affect Part 65 of the Commission's rules. Therefore, we are notifying carriers that SFAS-96 should not be adopted unless the Commission specifically requires the adoption of SFAS-96 accounting in the future.

5. ACCORDINGLY, IT IS ORDERED, pursuant to Section 32.16 of the Commission's rules, as amended, 47 C.F.R. §32.16, that all subject carriers are hereby notified that they may not adopt SFAS-96 accounting.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T OF VIRGIN ISLANDS, INC. — File No. C4-88-002-P/L

Application for authority to construct a two-way microwave radio system between Megans Bay, U.S. Virgin Islands and Tortola, British Virgin Islands

ORDER AND AUTHORIZATION

Adopted: July 21, 1988 **Released August 1, 1988**

By the Chief, International Facilities Division:

1. On January 29, 1988, AT&T of Virgin Islands, Inc. (AT&T) filed an application requesting authority, pursuant to Part 23 of the Commission's Rules, to construct and operate a two-way digital microwave radio system between Megans Bay, U.S. Virgin Islands and Tortola, British Virgin Islands to replace an existing analog system. AT&T also requested that a license be reissued to indicate its acquisition of the Megans Bay station from ITT Communications, Inc. The application was placed on public notice on February 24, 1988. No comments were received.

2. Upon consideration of the application, we find that the present and future public convenience and necessity require the authorization for the construction of the requested facilities.

3. Accordingly, IT IS ORDERED that the application of AT&T of Virgin Islands, File No. C4-88-002-P/L, IS GRANTED and AT&T is authorized to construct a two-way microwave radio system at Megans Bay, U.S. Virgin Islands. This facility will communicate with the station located at Chalwell Peak, Tortola, British Virgin Islands.

4. IT IS FURTHER ORDERED that AT&T is authorized to operate on the following frequencies from Megans Bay at 18-22-40 North Latitude/64-55-45 West Longitude:

Transmit 6256.54V(23T) and 6375.14V(27T) MHz

Receive 5974.85V(12T) and 6093.45V(16T) MHz

5. This order is issued under Section 0.291 of the Commission's Rules on Delegations of Authority, is effective upon release and is subject to review under Section 1.115 of the Rules on Practice and Procedure. Review by the full Commission may be requested within 30 days of the date of public notice of this order (*see* Commission Rule 1.4(b)(2)) by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail in time to be received by the due date.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

US SPRINT
COMMUNICATIONS
COMPANY,
Complainant,

v. File No. E-88-41

SOUTHWESTERN BELL
TELEPHONE
COMPANY,
Defendant.

ORDER

Adopted: July 22, 1988; Released: August 2, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On December 31, 1987, US Sprint Communications Company (Sprint) filed a formal complaint with the Commission against Southwestern Bell Telephone Company (SW Bell). Sprint alleged that certain provisions of SW Bell's Tariff F.C.C. No. 68, concerning the provision of 800-NXX codes, violated Sectons 201(b) and 202(a) of the Communications Act (Act). SW Bell denied the allegation, stating that it charged a lawful tariffed rate to activate 800-NXX codes.

2. The Common Carrier Bureau granted the parties extensions of time until July 5, 1988, to facilitate their ongoing negotiations towards resolution of the issues in controversy. On July 1, 1988, Sprint notified the Bureau that the parties have agreed to an informal resolution of the matter in controversy and therefore filed a Motion to Dismiss its complaint. We find that it would be in the public interest to grant Sprint's motion.

3. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that the Motion to Dismiss filed by US Sprint Communications Company IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-370

In the Matter of

Amendment of Section 73.202(b), RM-6311
Table of Allotments,
FM Broadcast Stations.
(Idaho Falls, Idaho)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed AJP Investment Co., Inc. (petitioner), which seeks to allot Channel 288C to Idaho Falls, Idaho, as its fourth FM service. Petitioner stated its intention to apply for use of the channel, if allotted. Channel 288C can be allotted to Idaho Falls in compliance with the minimum distance separation requirements of Section 73.207(b) of the Rules.[1]

2. Accordingly, in order to accomodate the request of the petitioner for a fourth FM service at Idaho Falls, Idaho, comments are invited on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules with regard to the following community:

	Channel No.	
City	Present	Proposed
Idaho Falls, Idaho	241C1, 256C1, 277C1	241C1, 256C1, 277C1, 288C

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **September 22, 1988,** and reply comments on or before **October 7, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harry P. Warner
1900 Avenue of the Stars
Suite 2440 - Century City
Los Angeles, California 90067

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Nancy Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 288C at city reference are 43-29-30 and 112-02-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-369

In the Matter of

Amendment of Section 73.202(b), RM-6282
Table of Allotments,
FM Broadcast Stations.
(Mt. Morris and Savanna,
Illinois)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: June 29, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Carroll County Communications, Inc. (petitioner), licensee of Station WCCI(FM) at Savanna, Illinois, proposing to substitute Channel 262B1 for Channel 261A at Savanna, and to modify its Class A license to specify the Class B1 channel. The proposal to allot Channel 262B1 to Savanna will require the substitution of Channel 239A for Channel 263A at Mt. Morris, Illinois, and the modification of the construction permit for that channel (BPH 870819NE) accordingly.

2. A staff engineering study indicates that both the Mt. Morris and Savanna substitutions can be made in compliance with minimum distance separation requirements. The transmitter for Channel 262B1 at Savanna must be located 4.8 kilometers (3 miles) west of the city to meet spacing requirements to Station WLOO(FM), Channel 262B at Chicago, Illinois.[1]

3. We shall propose to modify the license of Station WCCI(FM) to specify operation on Channel 262B1, as requested. In accordance with Section 1.420(g) of the Rules, we shall not accept other expressions of interest.

4. We are also issuing a Show Cause Order to M&M Broadcasting, permittee on Channel 263A at Mt. Morris, Illinois, seeking comments as to why its construction permit should not be modified to specify operation on Channel 239A. Whenever an existing permittee or licensee is ordered to switch channels in order to accommodate a new allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the permittee or licensee for reasonable and prudent expenses incurred by the change of channels. Petitioner noted its awareness of a pending application for Channel 263A at Mt. Morris, which has recently been granted. In comments to the *Notice* petitioner is requested to state its willingness to reimburse M&M for reasonable costs in changing its channel.

5. In view of the fact that the proposed allotment could provide Savanna with a wide coverage area service, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below:

	Channel No.	
City	Present	Proposed
Mt. Morris, Illinois	263A	239A
Savanna, Illinois	261A	262B1

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, M&M Broadcasting SHALL SHOW CAUSE why its construction permit should not be modified to specify operation on Channel 239A in lieu of Channel 263A.

7. Pursuant to Section 1.87 of the Commission's Rules, M&M Broadcasting may, not later that **September 22, 1988,** file a written statement showing with particularity why its construction permit should not be modified as proposed in the *Order to Show Cause*. The Commission may call on M&M Broadcasting to furnish additional information. If M&M Broadcasting, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, M&M Broadcasting will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* and *Order to Show Cause*, to M&M Broadcasting as follows: 1943 Greenview, North Brook, Illinois 60062.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **September 22, 1988,** and reply comments on or before **October 7, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Steve A. Lancellotta
Wheeler & Wheeler
1729 H Street, N.W.
Suite 200
Washington, D.C. 20006
(Attorney for petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 262B1 at the restricted site are 42-07-49 and 90-09-05, and the coordinates for Channel 239A at Mt. Morris are 42-04-14 and 89-27-04.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-442

In the Matter of

Amendment of Section 73.202(b), RM-6011
Table of Allotments,
FM Broadcast Stations.
(Stamford, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 6369 (1987), adopted at the request of Jon Bruce Thoen (petitioner), proposing the substitution of Channel 246C2 for Channel 221A at Stamford, Texas. We also proposed in the *Notice* the modification of the construction permit for Station KZOM(FM) at Stamford, in order to provide a first wide coverage area FM service at that community. In response to the *Notice*, Ken Lane (Lane) filed an opposition to the proposal. No comments were received from petitioner.

2. Lane, in his comments, states that petitioner cannot restate his intention to apply for the proposed allotment since he no longer has a construction permit for Station KZOM(FM). Lane points to the fact that the Commission denied petitioner's third request for an extension of time to construct the station and ordered that the construction permit and call letters be forfeited and cancelled. Lane contends that since there is no longer any station to upgrade, the proposal should be denied.

3. The Commission has cancelled the petitioner's permit for FM Station KZOM(FM), Channel 221A, Stamford, Texas. In addition, the Commission recently announced a window period for filing applications for Channel 221A at Stamford. *See Public Notice*, Report No. CF-9, released May 31, 1988. Furthermore, as stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's general policy to refrain from making a new allotment to a community absent an expression of interest. Therefore, in view of the aforementioned we are dismissing the petitioner's proposal.

4. Accordingly, IT IS ORDERED, that the petition of Jon Bruce Thoen requesting the substitution of Channel 246C2 for Channel 221A at Stamford, IS HEREBY DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-367

In the Matter of

Amendment of Section 73.202(b), RM-6221
Table of Allotments,
FM Broadcast Stations.
(Selma, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein a petition for rule making filed on behalf of Holder Communications Corp. (petitioner), licensee of Station WTUN(FM), Channel 261A, Selma, Alabama, seeking the substitution of Channel 261C2 for Channel 261A and modification of its license accordingly to specify the higher power channel.

2. We believe the petitioner's proposal merits consideration since it could provide an additional expanded coverage FM service to Selma. A staff engineering analysis has verified that Channel 261C2 can be substituted for Channel 261A at the petitioner's present transmitter site,[1] in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

3. In consideration of the above, we propose to substitute Channel 261C2 for Channel 261A at Selma, Alabama. As requested, we also propose to modify the Class A license of Station WTUN(FM) to specify operation on Channel 261C2. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 261C2 at Selma.

4. Accordingly, in order to provide Selma with an additional expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Selma, Alabama	261A,265C2,[2] 287C2	261C2,265C2, 287C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 22, 1988,** and reply comments on or before **October 7, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John B. Kenkel, Esq.
Kenkel, Barnard & Edmundson
1220 - 19th St., NW, #202
Washington, D.C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The reference coordinates at the present site of Station WTUN(FM) are 32-26-02 and 87-00-40.

[2] Channel 265C2 was recently allotted to Selma, Alabama in MM Docket No. 87-437.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-355

In the Matter of

Amendment of Section 73.202(b), RM-6396
Table of Allotments,
FM Broadcast Stations.
(Indian Springs, Nevada)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 30, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Claire B. Benezra (petitioner) requesting the allotment of Channel 257A to Indian Springs, Nevada, as the community's first local FM service. Channel 257A can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission distribute broadcast channels among the several states and communities. A community for allotment purposes has been defined as an identifiable population grouping. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allotment purposes. *See , e. g., Ansley, Alabama*, 46 Fed. Reg. 58688, published December 3, 1983, and *Ellwood, California*, 50 Fed. Reg. 13031, published April 2, 1985. Petitioner states that Indian Springs is located approximately 35 kilometers southeast of the the Atomic Energy Commission's Nevada Test Site and that it has a population of 700 persons. However, Indian Springs is not listed in the 1980 U.S. Census and petitioner does not state that it is incorporated. Therefore, petitioner is requested to submit additional information regarding Indian Springs to demonstrate whether it has any businesses, social organizations and governmental units that identify themselves therewith.

3. We believe the public interest would be served by proposing the allotment of Channel 257A since it could provide Indian Springs, Nevada, with its first local FM service, if it is ultimately determined to be a community for allotment purposes. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No. Present	Proposed
Indian Springs, Nevada	--	257A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 22, 1988,** and reply comments on or before **October 7, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Charles A. Magnuson
Carl T. Jones Corporation
7901 Yarnwood Court
Springfield, Virginia 22153
(Engineering Consultant to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division

Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 36-34-30 and West Longitude 115-40-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-368

In the Matter of

Amendment of Section 73.202(b), RM-6286
Table of Allotments,
FM Broadcast Stations.
(Burnside, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein a petition for rule making filed by Lenn R. Pruitt (petitioner), licensee of Station WJDJ(FM), Burnside, Kentucky, which seeks to substitute Channel 230C2 for Channel 230A at Burnside. Petitioner also requests modification of his license to specify the Class C2 channel.

2. A staff engineering analysis indicates that the allotment of Channel 230C2 to Burnside, operating at petitioner's proposed site, 19.1 kilometers (11.9 miles) northeast of the city, meets the spacing requirements of Section 73.207 of the Commission's Rules.[1]

3. In accordance with our established policy, we shall propose to modify the license for Station WJDJ(FM), Burnside, Kentucky, to specify operation on Channel 230C2. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, the modification can be implemented without demonstrating the availability of an additional equivalent channel for use by other interested parties. In addition, the Commission will not consider competing uses of the channel at the same community.

4. Accordingly, in order to provide Burnside with an opportunity for its first wide coverage area FM station, the Commission proposes to amend the FM Table of Allotments Section 73.202(b) of the Rules, as it relates to that community as follows:

	Channel No.	
City	Present	Proposed
Burnside, Kentucky	230A	230C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 22, 1988,** and reply comments on or before **October 7, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lenn R. Pruitt
P.O. Box 32
Greensburg, Kentucky 42743
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in

initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 230C2 at petitioner's proposed site are 37-08-30 and 84-30-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-347

In re Applications of

UNITED BROADCASTING OF IDAHO, INC. (hereafter United) File No. BPH-870730MB

MEDIA WEST, INC. (hereafter Media) File No. BPH-870730MT

For Construction Permit for
a New FM Station, Channel 233A,
Hayden, Idaho

HEARING DESIGNATION ORDER

Adopted: June 24, 1988; Released: August 2, 1988

By the Chief, Audio Services Division

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

6. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 23, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-348

In re Applications of

OCULUS BROADCASTING CORPORATION (hereafter Oculus) File No. BPH-870819MH

BENNETT'S BROADCASTING COMPANY (hereafter Bennett) File No. BPH-870819MY

For Construction Permit for
a New FM Station, Channel 279A,
Royston, Georgia.

HEARING DESIGNATION ORDER

Adopted: June 24, 1988; Released: August 2, 1988

By the Chief, Audio Services Division

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *EEO*. In response to Section VI of FCC Form 301, Oculus indicated that it will employ five or more fulltime employees. Therefore, Oculus is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines for the Model EEO Program, paragraph IV, instruct the applicant to specify the sources that it proposes to use in recruiting minority and female applicants. Oculus does not provide a minority recruitment source. Accordingly, Oculus will be required to amend its application within 30 days of the release of this Order, by submitting specific sources of minority recruitment to the presiding Adminstrative Law Judge.

3. Section II, Item 4 of FCC Form 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Bennett has provided only the city and state of its principals. Accordingly, Bennett must submit an amendment which gives all the information required by Section II, Item 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Oculus	June 9, 1988

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Oculus shall submit data relative to paragraph IV of its Model EEO Progm as specified in paragraph 2 above, to the Administrative Law Judge.

9. IT IS FURTHER ORDERED, That the June 9, 1988 petition for leave to amend filed by Oculus IS GRANTED and the corresponding amendment IS ACCEPTED to the extent herein.

10. IT IS FURTHER ORDERED, That Bennett shall submit an amendment which contains the information required by Section II, Item 4 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 23, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-349

In re Applications of

FRANK WERBER (hereafter: Werber) File No. BPH-870730MH

AVILA BEACH, LTD. (hereafter: ABL) File No. BPH-870730MW

For a Construction Permit
for a New FM Station
on Channel 233A
in Silver City, New Mexico

HEARING DESIGNATION ORDER

Adopted: June 24, 1988; Released: August 2, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Werber*. Werber is the owner of "Silver City Enterprise," a weekly newspaper in Silver City, New Mexico. Werber has indicated his intent to terminate his relationship with the newspaper in the event of grant of the referenced application. Accordingly, in the event of grant of Werber's application, Werber will be required to sever all connections with the newspaper prior to the commencement of program test authority.

3. Werber is unable to certify that he has sufficient net liquid assets on hand or that sufficient funds are available from committed sources to construct and operate his proposed facility for three months without revenue. Accordingly, an issue will be specified to determine whether he is financially qualified.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Werber, whether the applicant is financially qualified.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That, in the event of grant of the Werber application, Werber will be ordered to sever all connections with the "Silver City Enterprise" prior to the commencement of program test authority.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 23, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] The application of Charles, Esther and Freddie E. Morris was returned on February 11, 1988, prior to designation. The Morris' have not filed a timely petition for reconsideration.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-303

In re Applications of

P. SCOTT MILLER, MARVIN H. HALBERSTEIN AND DONALD E. RICE (hereafter MH&R) — File No. BPH-861215ME

NEWBERRY BROADCASTING CORPORATION (hereafter N.B.C.) — File No. BPH-861217MF

ROBERTA ROE JOHNSON d/b/a BAMA BROADCASTING COMPANY (hereafter Bama) — File No. BPH-861217MH

RIDDEN PARTNERSHIP (hereafter Ridden) — File No. BPH-861217MS

ROBERT J. ADAMSON (hereafter Adamson) — File No. BPH-861217MW

NEWBERRY BROADCAST PARTNERSHIP (hereafter NBP) — File No. BPH-861217ND

CLARENCE T. BARINOWSKI (hereafter Barinowski) — File No. BPH-861217NG

For a Construction Permit for a New FM Station on Channel 263A in Newberry, Florida

ERRATUM

Released: August 1, 1988

The Hearing Designation Order in MM Docket No. 88-303 DA 88-901 (released June 30, 1988), for Channel 263A in Newberry, Florida, contains errors in Paragraphs 4 and 11. These sections of the order are hereby amended to read as follows:

4. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after February 24, 1987, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
MH&R	3/3/87 (engineering)
Ridden	2/17/88
Bama	12/11/87

11. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: MH&R, Ridden, Bama.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Contel Corporation Telephone Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 7-1702

MEMORANDUM OPINION AND ORDER

Adopted: July 22, 1988; Released: August 2, 1988

By the Chief, Common Carrier Bureau:

TABLE OF CONTENTS

	Paragraph
I. Introduction and Background	1-4
II. General Issues	
A. Overall Sufficiency	5-8
B. Nonregulated Activities	9
C. Incidental Activities	10-11
D. Affiliate Transactions	12-14
E. Employee Time Reporting	15-17
F. Joint Use of Network Plant	18-22
III. Account - by - Account Analysis	23
A. Cost Assignment Procedures	24-26
B. Accounts to be Added	27-28
C. Other Issues	29-31
D. Specific Accounts	32-49
IV. Procedural Issues	50-55
V. Ordering Clauses	56-57

I. INTRODUCTION AND BACKGROUND

1. On August 31, 1987, Contel Corporation (Contel), on behalf of its operating telephone companies,[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separation of Contel's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, Contel implemented the manual on January 1, 1988, concurrent with the implementation of the revised Uniform System of Accounts (USOA). [3] The manual includes a list of Contel's nonregulated activities, a list of activities Contel treats as incidental to regulated activities for accounting purposes, information on employee time reporting, and information describing how each revised USOA account is allocated between regulated and nonregulated activities.

2. Three parties filed comments on Contel's manual, and Contel filed a reply.[4] In addition to reviewing the pleadings, we have conducted our own review of the Contel manual to determine its consistency with the Commission's rules and policies. We have concluded that while the Contel manual is deficient in some respects, its format and content generally provide the Common Carrier Bureau (Bureau) with a sufficient understanding of the proposed cost allocation procedures to permit us to make an informed judgment as to the ability of the manual to prevent cross subsidy. We conclude that, overall, Contel's manual provides sufficient assurance against the misallocation of costs and revenues to permit Contel to continue to apply the manual pending submission of a revised manual that meets all Commission requirements.

3. We require that in certain instances Contel specify in greater detail the procedures it intends to follow in allocating the costs and revenues of regulated and nonregulated activities, and in some cases, correct ambiguities in and omissions from its manual. We require Contel to submit revisions to its manual, and we shall solicit public comment on them. Any revisions to the manual that result from the instant Order approving the manual will be made effective retroactive to January 1, 1988. Contel shall, in addition, file midcourse corrections to its 1988 access and other FCC tariffs where necessary to reflect whatever substantial modifications in cost allocation procedures we require in this Order.[5] We therefore approve Contel's cost allocation manual subject to a number of conditions and requirements for the submission of further information.

4. This Order is divided into three substantive sections. Section II discusses general issues, including portions of the manual that relate to nonregulated activities, incidental activities, affiliate transactions, and employee time keeping. Section III discusses issues raised in connection with the proposed apportionment methods and specific accounts. Section IV discusses certain procedural issues, as well as information concerning the procedural requirements for updating cost allocation manuals.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each nonregulated activity; (b) a list of all the activities the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage, or will engage, in transactions with the carrier entity and describing the nature, terms and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the allocation method for each cost category (or pool).[6] In addition, the manuals must contain a description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation method for nonproductive time.[7]

6. MCI argues that Contel's cost manual cannot be reviewed effectively because many of the pooling and apportionment processes presented in the manual are poorly defined and inadequately justified.[8] For example, MCI states, while Contel maintains that its manual out-

lines a procedure through which USOA accounts are transformed into multiple cost pools, Contel's description of this cost procedure is not adequate and does not permit meaningful insight into the cost pooling efforts.[9] Additionally, MCI claims that because of these deficiencies, the Contel cost manual does not permit an accurate assessment to meet the Commission's audit requirements.[10] AT&T states that within the parameters of the activities that Contel lists in its cost manual, the manual appears to comply generally with the principles of the *Joint Cost Order*. However, AT&T notes, several specific proposed cost assignment procedures need to be corrected.[11]

7. In response, Contel asserts that MCI's criticism of Contel's pooling and cost allocation processes is totally unfounded and must be rejected.[12] Contel notes that MCI virtually ignores the detailed cost pooling and apportionment information contained in Contel's cost table.[13] Contel asserts that this table shows, for each USOA plant and expense account, the cost pool to which the amounts in the account will be assigned, the basis on which each cost pool is developed, and the apportionment procedures used to separate costs between regulated and nonregulated activities.[14] Contel states that these details are precisely the kind of "detailed specifications" prescribed in the *Joint Cost Order*, and are more than adequate to permit independent audits of Contel's cost allocation procedures.[15] Morever, Contel states that MCI ignores the opinion of Contel's outside accountants that Contel's cost manual is auditable.[16] In response to AT&T, Contel notes that while it believes its cost manual can be approved as filed, it will amend its manual to incorporate substantially all of AT&T's suggested changes.[17] (The specific amendments are discussed in the section on "Specific Accounts," *infra*.)

8. Generally, we find that Contel's manual contains cost pool and apportionment information at a level of detail sufficient for us to conclude that the manual procedures will discourage cross-subsidy. Moreover, we believe that, overall, Contel's manual is adequate to meet the Commission's audit requirements. We note, however, that a number of ambiguities and omissions exist in the manual that must be corrected with the submission of additional information and amendments. We are particularly concerned that Contel's manual does not include a section on affiliate transactions,[18] as required by the *Joint Cost Order*.[19] We do not believe, however, that this omission or the other defects in Contel's manual require its rejection. Instead, we believe the best procedure is to permit Contel to continue to implement its manual, while requiring it to make revisions. Our approval of Contel's manual, therefore, is conditioned upon the timely submission of a revised manual responsive to the matters discussed in this Order.

B. Nonregulated Activities

9. The Contel cost manual provides the required description of Contel's nonregulated activities.[20] Contel divides its nonregulated activities into five categories: (1) sales, leasing, and maintenance of customer premises equipment (CPE) and ancillary facilities; (2) inside wiring installation and maintenance; (3) voice mail; (4) Dial-it services; and (5) telemarketing. None of the parties commented on Contel's list and description of its nonregulated activities, and we find them adequate. Accordingly, we are satisfied that Contel has met the requirements of the *Joint Cost Order* on this matter.

C. Incidental Activities

10. Contel's manual also provides, as required, a list of nonregulated activities that are offered on an incidental basis to regulated activities.[21] In the *Joint Cost Order*, the Commission permitted carriers to account for incidental activities as if they were regulated, provided that the activities meet the following quantitative and qualitative tests: (a) the activity must be an outgrowth of regulated operations; (b) it cannot constitute a separate line of business; (c) it must have traditionally been treated as incidental for accounting purposes; and (d) the total of all incidental activities must not exceed one percent of a carrier's total operating revenues.[22]

11. Our review of the Contel incidental activities section reveals a need for additional information. First, while the manual states that Contel's incidental activities meet three of the above tests for incidental treatment,[23] Contel fails to address whether its proposed incidental activities are outgrowths of regulated operations. Contel must address all of the *Joint Cost Order* criteria before we can determine whether its treatment of these activities is in full compliance with the Commission's guidelines. Additionally, Contel does not provide sufficient information to enable us to determine the nature and scope of each activity proposed for incidental treatment. In this connection, Contel must clarify that "Land and Building Space Rental" meets the Commission's requirements for incidental activities. To the extent that this is an activity that is provided to affiliates, it constitutes an affiliate transaction, and its costs must be recorded according to the affiliate transactions rules. Finally, Contel must describe its incidental activities, "Presubscription List Sales for Equal Access" and "Directory Listings for Independent Publishers."[24]

D. Affiliate Transactions

12. The *Joint Cost Order* establishes specific rules governing the provision of assets and services to and from affiliates. These rules were created in order to discourage carriers from avoiding the cost allocation rules through affiliate transactions. For example, if a carrier sought to avoid the application of fully distributed costing, it could, in the absence of the affiliate transaction rules, provide assets or services to a separate but affiliated company to cause nonregulated operations to bear less than the carrier's fully distributed costs for the asset or service. The affiliate transaction rules specify the valuation standards that will be applied in accounting for transactions between a carrier and its affiliates. Those rules vary depending upon whether the transaction involves assets or services.[25] The *Joint Cost Order* requires that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[26] The *Joint Cost Order* also requires that each cost manual contain a chart showing all of the carrier's corporate affiliates.[27]

13. Our review of Contel's affiliate transactions section leads us to conclude that it is impossible to determine if Contel is following the Commission's affiliate transactions rules. In its manual, Contel states that "A description of the affilated companies and information pertaining to their operations are included . . . " in Section II under the heading "Administrative Structure."[28] While Contel briefly describes some affiliates and their operations under that heading, it provides virtually no information on the nature, terms, and frequency of transactions between any of

these affiliates. For example, Contel states that Contel Service Corporation provides several services to the telephone operating companies, but it fails to discuss the terms or frequency of these transactions.[29] Similarly, Contel states that two affiliates, Contel Executone and Contel Computer Systems, provide certain products and services to Contel's telephone operating companies, but it does not indentify these products or services, nor does it discuss terms or frequency of the transactions.[30] Contel must amend the affiliate transactions section of its manual to demonstrate compliance with the affiliate transactions rules of the *Joint Cost Order*. Sufficient information should be provided to enable us to determine that Contel understands and is following the Commission's rules.

14. Additionally, a review of Contel's organization chart shows that Contel lists "First Tier Operating Subsidiaries Only."[31] If we are to understand fully the relationships between Contel's affiliates, Contel must list *all* subsidiaries, including those of the operating telephone companies, as well as *all* of Contel's other affiliates. Contel is directed to amend its manual accordingly.

E. Employee Time Reporting

15. The *Joint Cost Order* permits carriers to select from among several methods of recording employee time. The Commission reasoned that, since the use of wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.[32]

16. Contel uses two time reporting systems: a positive time reporting system and a "Predetermined Payroll Schedule Assignment" system. The second system uses a combination of survey time reporting and exception time reporting to assign employee time between regulated and nonregulated activities. Contel's manual clearly identifies which employee groups are subject to each of the time reporting systems.

17. Our review of Contel's time reporting section reveals that Contel is generally in compliance with the *Joint Cost Order* requirements for employee time reporting. There are, however, several terms used by Contel that require additional explanation. In describing survey time reporting, Contel proposes to use a "representative sample of employees" for a "representative period of time."[33] Supposedly, these "representative" characteristics will enable Contel to account for the amount of time its employees spend on particular functions.[34] Contel's use of "representative" is unclear. We direct Contel to describe its sampling criteria in its revised manual.

F. Joint Use of Network Plant

18. In the *Joint Cost Order*, the Commission determined that jointly-used network plant (central office equipment and outside plant) must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission adopted a forecasted use approach in order to reflect the nature of capital investment decisions, *i. e.*, to determine that investment decisions are made in anticipation of future use.[35] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[36]

19. Contel does not discuss the joint use of network plant in its manual, nor is there any indication that it currently plans to use such plant jointly. However, in its Petition For Reconsideration, filed April 3, 1987, Contel requested that the *Joint Cost Order* requirement that network plant investment costs be allocated based on forecasted peaked relative use between nonregulated and regulated activities over the average depreciation life of the plant be modified to reflect forecasted use over a carrier's normal planning period, *i. e.*, about three years.[37]

20. Two parties comment on this issue. MCI states that Contel does not comply with the Commission's basic objectives of ensuring that ratepayers do not bear the costs of nonregulated ventures, and claims that Contel fails to deter underforecasts of nonregulated plant usage.[38] MCI argues that Contel imposes no effective penalty for underforecasting nonregulated usage, and offers no true-up mechanism for reconciling forecasts with actual usage.[39] IBM asserts that Contel's proposal in its Petiton For Reconsideration to assign investment costs on the basis of projected relative use over a very short forecasting period (three years) ignores or degrades the principle of investment risk.[40]

21. In response, Contel states that the arguments made by MCI should have been raised on reconsideration of the *Joint Cost Order*.[41] According to Contel, MCI's position is irrelevant to the Commission's review of Contel's manual because nothing in the *Joint Cost Order* or in the Commission's *Reconsideration Order* requires carrier cost allocation manuals to specify either a penalty provision for underforecasts of nonregulated usage or a true-up mechanism to reconcile forecasted usage with actual usage.[42] Contel does not respond to IBM's comments.

22. We have several observations on these matters. Initially, we note, as Contel has stated, the Commission has not required a penalty to be imposed against carriers for underforecasting peak relative nonregulated usage nor specified a "true-up" mechanism to reconcile forecasted with actual usage. If a carrier underforecasts nonregulated usage, it is simply required to reallocate plant from regulated to nonregulated activities at undepreciated baseline costs plus an interest charge equal to the interstate rate of return.[43] Therefore, we reject MCI's argument on this point. Second, both Contel's request for a waiver of the Commission's network plant peak usage forecasting requirements and IBM's arguments regarding that request have been been rendered moot as a result of of the Commission's decision in the *Reconsideration Order* to reduce the forecasting period to three years.[44] Finally, Contel's reply to AT&T states that Contel anticipates no joint use network plant for regulated and nonregulated activities,[45] but nowhere in the manual do we find a statement to this effect by Contel. We require Contel to amend its manual to clarify this point. If it does not intend to share network plant for regulated and nonregulated purposes, it must say so. If it does intend to share this plant, it must amend its manual to explain its procedures.[46]

III. ACCOUNT - BY - ACCOUNT ANALYSIS

23. Contel's manual describes the methods it proposes to use to derive cost pools and to apportion costs between regulated and nonregulated activities. This information appears in two places. First, Contel provides a narrative description of its general cost assignment principles.[47] Second, Contel provides apportionment information in a matrix format.[48] In addition to addressing the issues raised by the parties with respect to the cost pool assignment and cost apportionment bases for individual accounts contained in the manual, we have reviewed the manual and identified additional issues to be resolved. Before discussing these specific account issues, however, we will discuss some general problems that relate to more than one account.

A. Cost Assignment Procedures

24. AT&T states that Contel fails to specify procedures for the assignment to nonregulated operations of certain investment and expenses incurred for nonregulated activities.[49] For example, AT&T notes, Contel's nonregulated activities include voice mail, Dial-it, and telemarketing services. AT&T contends that, depending on how Contel provides these services, the equipment used could be recorded either in central office equipment accounts (Accounts 2211 through 2232) or in the information origination/termination accounts (Accounts 2311, 2341, and 2362).[50] Similarly, AT&T argues, Contel's nonregulated operations also include CPE and inside wire services. According to AT&T, the expenses for these activities could be recorded in one or more of the information origination/termination expense accounts (Accounts 6311, 6341, and 6362).[51] AT&T observes, however, that Contel assigns all of these accounts, as well as the central office related expense accounts, directly to regulated services, which could result in the assignment of nonregulated costs to regulated activities.[52] According to AT&T, Contel should be required to amend its manual to provide procedures for apportionment to nonregulated operations portions of its central office and information origination/termination equipment investment and related expense accounts.[53]

25. Contel responds that although it does not foresee use of central office equipment by voice mail, Dial-it, or telemarketing services, it will amend its allocation procedures for those accounts, along with the outside plant accounts, to conform with the three-year forecast rule adopted in the Commission's *Reconsideration Order*.[54] Additionally, Contel states, it will modify its manual so that investment will be assigned directly to regulated and nonregulated activities for Accounts 2311, 2341, and 2362.[55] Finally, Contel notes that it will also amend the associated expense accounts, Accounts 6311, 6341, and 6362, along with Accounts 6211 through 6232, to apportion these accounts between regulated and nonregulated activities based on positive time reporting.[56]

26. We concur with these changes except for the one relating to the three-year forecast rule. If Contel does not anticipate any non- tariffed use of network plant by nonregulated activities, it should not amend its manual to provide for a different apportionment method at this time. As we stated in the *Bell Atlantic Order*, we see no need for hypothetical allocations of network plant.[57] Moreover, we direct Contel to describe the equipment it will use to provide its voice mail, Dial-it, and telemarketing services.

B. Accounts to be Added

27. In the *Joint Cost Order*, the Commission required that carriers submit cost allocation proposals for each USOA account and subaccount.[58] Since that requirement would have mandated the allocation of amounts that are not used in the jurisdictional separations and interstate ratemaking processes, the *ARMIS Order* eliminated the allocation requirement for particular accounts.[59] Appendix C to that Order listed for the first time the particular USOA accounts and subaccounts that would be subject to joint cost reporting. In addition, the Commission required carriers to report on six additional accounts used in the interstate ratemaking process. These additional accounts are: Account 2004, Telecommunications Plant Under Construction - Long Term; Account 2441, Conduit Systems; Acount 4120, Other Accrued Liabilities; Account 4360, Other Deferred Credits; Account 5050, Customer Premises Revenue; and Account 7150, Gains and Losses from the Disposition of Land and Art Works.[60]

28. Because the list released in the *ARMIS Order* was not available until after Contel filed its manual, the manual omits several accounts contained on that list. The manual also omits five of the six accounts that were added to the list -- only Account 2441, Conduit Systems, is included in the manual. We direct Contel to amend its manual to include allocation proposals for each of the omitted accounts. If, in making these revisions, Contel finds that there are several accounts for which it has nothing to report, it must list these accounts in its manual.[61]

C. Other Issues

29. MCI argues that Contel's manual does not offer an effective mechanism to limit cross-subsidies to nonregulated activities of investment in human capital development.[62] MCI asserts that to the extent that employee training and development costs benefit nonregulated service offerings, but are recovered through regulated operations, improper cross-subsidization occurs.[63]

30. In response, Contel states that although MCI does not precisely define the meaning of investment in human capital, the employee training and development costs referred to by MCI would ordinarily be included in the account to which the particular training and development activities relate, and would be allocated in accordance with the allocation procedure used for that account.[64] For example, Contel notes that for Account 6534, Plant Operations Administration Expense, craft employee training and development, which is considered to be nonproductive time, would be loaded on productive regulated and nonregulated time as determined by positive time reporting.[65] The same type of allocation would be made for training associated with Accounts 6535, 6611, 6612, and 6613, Contel states, while training for general accountants would be reflected in company subaccount 6711.100, which would be assigned to the "Accounting common cost pool" to be allocated between regulated and nonregulated activities using the general allocator.[66] Contel claims that there is no ground for MCI's claim that Contel's manual does not apportion costs associated with investment in human development between regulated and nonregulated activities. [67]

31. While we are satisfied with Contel's reponse, we note that nowhere in its cost manual did it provide an explanation of these procedures. Accordingly, Contel must amend its manual to describe, through the use of specific

examples, if necessary, how it will apportion employee training and development costs between regulated and nonregulated activities.

D. Specific Accounts

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

32. Contel has not proposed allocation methods for these accounts. When Contel amends its manual to provide for these accounts, it is directed to include two specific cost pools. For Account 1439, Contel must separately provide for a cost pool reflecting the cost of compensated absences. For Account 4120, a cost pool shall be established for liabilities related to compensated absences.

Account 2113 - Aircraft and Account 6113 - Aircraft Expense

33. Contel uses the general allocator to allocate investment and expenses in these accounts. The general allocator should be used only if a more cost causative allocator is unavailable or impractical. We believe Contel can use specific records or logs to allocate the costs in these accounts. We therefore require it to develop a different allocation mechanism and to incorporate that mechanism into its revised manual.

Account 2115 - Garage Work Equipment and Account 6115 - Garage Work Equipment Expense

34. Contel allocates these accounts based on the ratio of regulated to nonregulated investment in Accounts 2112, Motor Vehicles, and 2114, Special Purpose Vehicles. In its comments, AT&T argues that Contel should also include the regulated and nonregulated investment in Accounts 2113, Aircraft, and 2116, Other Work Equipment, in its allocation calculation.[68] In response, Contel states that it will amend its manual to include investment in Other Work Equipment in its calculation; however, Contel represents that garage work equipment will never be used for aircraft maintenance. Therefore, Contel opposes AT&T's proposal that it include aircraft investment in this calculation.[69] We concur with Contel's proposal for the reasons stated in its Reply.

Account 2116 - Other Work Equipment

35. Contel proposes to assign all investment in this account directly to regulated operations. In its comments, AT&T states that because the costs in Other Work Equipment expenses are caused by central offfice equipment and outside plant, Account 2116 should be allocated based on the corresponding central office equipment and outside plant accounts.[70] In reply, Contel states that it is not anticipating any joint use of the underlying central office equipment and outside plant for regulated and nonregulated activities, but that it will amend its manual to allocate Account 2116 based on the allocation of corresponding central office equipment and outside plant supported by the Account 2116 investment.[71] We disagree with both AT&T and Contel. As we stated earlier,[72] if Contel anticipates no non- tariffed use of network plant by nonregulated activities, it should not amend its manual to reflect a hypothetical usage.

Account 2124 - General Purpose Computers and Account 6124 - General Purpose Computers Expense

36. Contel proposes to use the general allocator to allocate the costs in these accounts. We believe that Contel can allocate these costs by a more cost causative method, such as the use of relative central processing unit (CPU) time dedicated to regulated and nonregulated operations or an analysis of records associated with computer use. We direct Contel to develop a more cost causative procedure for allocating the costs in these accounts.

Account 2211 - Analog Electronic Switching, Account 2212 - Digital Electronic Switching, Account 2215 - Electro - mechanical Switching, Account 2231 - Radio Systems, Account 2232 - Circuit Equipment, and Accounts 2411 - 2441 - Outside Plant

37. Contel maintains that all of these accounts will be assigned directly to regulated activities. Contel's manual states that the amounts in these accounts will be "available either directly or indirectly under tariff."[73] We direct Contel to clarify in its revised manual what is meant by indirect availability under tariff.

Account 2682 - Leasehold Improvements, Account 3420 - Accumulated Amortization - Leasehold Improvements, and Account 6563 - Amortization Expense - Tangible Leasehold Improvements

38. Contel proposes to allocate the "General office Leasehold" cost pool in Account 2682 on the same basis as the functional building types containing the leasehold improvements. This methodology does not appear to present a reasonable allocator because improvements made to leasehold property may have little to do with the relative use of all central office and general office buildings owned by Contel. Therefore, we require Contel to allocate this account on a more cost causative basis, such as an individual analysis of its leasehold improvements. We also require Contel to allocate Account 3420, Accumulated Amortization - Leasehold Improvements and Account 6563, Amortization Expense - Tangible Leasehold Improvements, on the same basis as Account 2682.

Account 2690 - Intangibles, Account 3500 - Accumulated Amortization - Intangibles, and Account 6564 - Amortization Expense - Intangibles

39. Contel's cost manual has two cost pools for Account 2690, "Regulated intangibles" and "Common intangibles." The former is assigned directly to regulated operations, while the latter is allocated using the general allocator. We believe a more cost causative allocator, such as an analysis of specific intangibles, can be used to allocate the "common intangibles" cost pool. Contel is directed to amend its manual to reflect this change or justify its use of its current procedures. We also direct Contel to make corresponding changes for Account 3500, Accumulated Amortization - Intangibles and Account 6564, Amortization Expense - Intangibles, both of which are allocated based on the allocation of Account 2690.

Account 3100 - Accumulated Depreciation

40. Contel plans to establish cost pools for this account by "major asset account" and assign these cost pools to regulated and nonregulated activities in the same proportion as the corresponding asset accounts. In the *Joint Cost Order*, the Commission required that the depreciation reserve be allocated at the USOA account level.[74] We re-

quire Contel to confirm that its allocation proposal for this account complies with the Commission's requirements. If it does not, Contel must amend its manual accordingly.

Account 4100 - Net Current Deferred Operating Income Taxes and Account 4340 - Net Noncurrent Deferred Operating Income Taxes

41. For each of these accounts, Contel proposes to apportion the cost pools between regulated and nonregulated by "Asset, liabilities or items of income that gave rise to the deferred income tax." We find that this proposal is overly vague. While we agree that both accounts should be apportioned using the identical methodology, Contel must be more specific in its revised manual about the basis for allocation of each account.

Account 6512 - Provisioning Expense

42. In its manual, Contel proposes to have one cost pool for this account and allocate it based on the general allocator. We believe that Contel can develop three cost pools for this account, one for regulated, one for nonregulated, and a third for common. The first two can be directly assigned to their respective operations, while the third can be allocated using the general allocator. Contel must amend its manual to reflect this change, or justify its current procedure.

Account 6531 - Power Expense and Account 6532 - Network Administration Expense

43. Contel will assign all of the costs in these accounts directly to regulated operations. AT&T notes that Contel's procedures for these accounts ignore the facts that power expense is generated by central office equipment and network administration expense is incurred for central office equipment and outside plant.[75] Accordingly, AT&T argues, Contel should allocate Account 6531 based on the allocation of central office equipment and Account 6532 based on the allocation of both central office equipment and outside plant.[76] In response, Contel states that it is not anticipating any joint use of the underlying central office and outside plant, but to be consistent with its change in the central office equipment and outside plant investment accounts, it will amend its manual so that power expense and network administration expense will be allocated based on the underlying plant accounts as recommended by AT&T. As we have stated above,[77] we disagree with both AT&T and Contel on this issue. If Contel currently is not anticipating any non-tariffed use of network plant, it should not amend its manual. Accordingly, Contel should continue to assign the costs in these accounts directly to regulated operations.

Account 6623 - Customer Service Expense

44. Contel proposes to allocate the "Service order" and "Inquiry" cost pools in this account on the basis of survey time reporting. It does not explain, however, the details of how the surveys will be conducted. Contel is directed to amend its manual to provide a description of the methodology used to conduct survey time reporting for this account.

Account 6711 - Executive Expense, Account 6712 - Planning Expense, and Account 6724 - Information Management Expense

45. Contel plans to allocate the costs in these accounts on the basis of the general allocator. We believe Contel must attempt to assign or attribute these costs either directly or indirectly. In the *Joint Cost Order*, the Commission created a hierarchy of allocation mechanisms that employs the general allocator only if costs cannot be assigned or attributed on some cost causative basis. We believe that a substantial portion of these accounts can be assigned or attributed. Contel shall either do so in its revised manual or justify its use of the general allocator.

Account 6725 - Legal Expense

46. In its manual, Contel apportions this account into regulated, nonregulated, and common cost pools. The first two pools are directly assigned, the third is allocated based on the general allocator. The common legal expense includes both common legal expenses and overhead expenses, such as law library and general research costs. Since the overhead expenses support all of the Contel activities for which all legal expenses are incurred, Contel shall create a separate cost pool for overhead expenses. While we have no objection to use of the general allocator to allocate the common expense cost pool, Contel shall allocate the overhead cost pool in the same proportion as its directly assigned legal expenses are allocated.

Account 6726 - Procurement Expense

47. Contel proposes to allocate this account based on the general allocator. We believe a more direct method, such as time reporting, can be used to allocate these costs. We require Contel to develop a more cost causative method for allocating its procurement expenses, or justify its use of the general allocator.

Account 6727 - Research and Development Expense

48. Contel will assign expenses in this account directly to regulated or nonregulated operations. In its comments, AT&T states that to the extent Contel engages in "fundamental" research and development, that effort is directed toward general knowledge and the costs should be allocated based on the general allocator. In response, Contel states that although its research and development is invariably focused on specific projects which readily can be identified as either regulated or nonregulated, it will amend its manual as AT&T suggests for the purpose of allocating "fundamental" research and development. We concur with this change. Contel, therefore, is directed to create a cost pool for "fundamental" research and development in this account.

Account 7220 - Operating Federal Income Taxes, Account 7230 - Operating State and Local Income Taxes, and Account 7250 - Provision for Deferred Operating Income Taxes

49. Contel proposes to allocate the current income tax accounts "based on the separate taxable incomes of the regulated and nonregulated operations" and the provision for deferred operating income taxes account on "relative investment value." Applying different apportionment bases to any one or group of these accounts could result in the apportionment of these costs in a manner that is inconsistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting

purposes. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in an appropriate distribution between regulated and nonregulated activities. We believe that book income should be operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated -- income taxes. We direct Contel to amend its manual accordingly.

IV. PROCEDURAL ISSUES

50. In this section we address two procedural issues affecting Contel's cost allocation manual. These issues are: (a) the submission of a revised manual in compliance with this Order and (b) the routine submission of future amendments to the manual.

51. *Revised manual.* We have required Contel to submit extensive amendments clarifying and changing many of its cost allocation procedures. We have also directed Contel to submit additional information concerning its affiliate transactions, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of Contel proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that a determination on their compliance with Commission cost allocation methodologies would be exposed to public scrutiny prior to their implementation. Similarly, we believe that our review of Contel's amendments will be aided by public comment on the revisions.[78]

52. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement cost allocation manuals. All revisions shall be made retroactive to January 1, 1988. In addition, to facilitate our review of the updated manual and its availability to the public, Contel must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[79] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a vertical line in the right margin of the page.

53. *Routine amendments.* In addition to reporting requirements, we also must resolve the issue of the procedures Contel will be required to follow when updating its cost allocation manual. We conclude that Contel will be subject to the same requirements that we imposed on the BOCs.[80] As we have determined in the BOC context, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. Therefore, we will apply the following requirements for the update of Contel's manual. First, because it is important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities, several categories of information require our attention before the manual is implemented. These are: (a) changes to the cost categories and their allocation mechanisms, including changes reflecting the introduction of enhanced services that require shared use of basic network switch investment; and (b) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Bureau, pursuant to its delegated authority, rejects or stays the effectiveness of the change.[81]

54. Second, because other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes, we require that Contel file such changes in a timely manner.[82] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

55. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements in the *Joint Cost Order*. At the same time, they minimize the number of times Contel must seek prior Commission approval before implementing a change and provides a system to ensure timely review of Contel's proposals.

V. ORDERING CLAUSES

56. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the Cost Allocation Manual filed by Contel IS APPROVED, subject to the conditions noted in this Order.

57. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock,
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Contel Tier I operating telephone companies are: Continental Telephone Company of California; Continental Telephone Company of New York, Inc.; Contel of Texas; and Continental Telephone Company of Virginia.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*), *petitions for further recon. pending.*

[3] 47 C.F.R. Part 32.

[4] Comments were filed by: American Telephone and Telegraph Company (AT&T); International Business Machines Corporation (IBM); and MCI TelecommunicationsCorporation (MCI).

[5] *Joint Cost Order*, 2 FCC Rcd at 1327.

[6] *Id.* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[7] *Id.* at 1321-22.

[8] MCI Comments at 4-7.

[9] *Id.*

[10] *Id.*

[11] AT&T Comments at 1-2.

[12] Contel Reply at 3.

[13] *Id.* at 4, *citing* Contel Manual at 19-38.

[14] Contel Reply at 4.

[15] *Id.* at 5.

[16] *Id.* at 6-7.

[17] *Id.* at 2.

[18] *See* paragraphs 12-14, *infra*.

[19] *Joint Cost Order*, 2 FCC Rcd at 1328.

[20] Contel Manual at 16.

[21] *Id.* at 17.

[22] *Joint Cost Order*, 2 FCC Rcd at 1328.

[23] *See* paragraph 10, *supra*.

[24] *See , e. g.*, U S West's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 195, 197-98 (1988) (*U S West Order*).

[25] *See Joint Cost Order*, 2 FCC Rcd at 1355, and *Reconsideration Order*, 2 FCC Rcd at 6295. Carriers must value services at the prevailing price, if the service is generally available to the public. If it is not generally available, carriers must allocate the cost of the service pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules. For assets, carriers must record transactions at the prevailing price, if one exists. If not, carriers must record assets transferred from the affiliate to the carrier at the lower of net book cost or fair market value, while assets transferred from the carrier to the affiliate will be recorded at the higher of net book cost or fair market value. *Joint Cost* Order, 2 FCC Rcd at 1343, 1345, amended by Reconsideration Order, 2 FCC Rcd at 6308-09.

[26] Joint Cost Order, 2 FCC Rcd at 1328.

[27] *Id.*

[28] Contel Manual at 3.

[29] *Id.* at 6.

[30] *Id.* at 7.

[31] *Id.* , Attachment to p. 7.

[32] Joint Cost Order, 2 FCC Rcd at 1321-22.

[33] Contel Manual at 12.

[34] *Id.*

[35] Joint Cost Order, 2 FCC Rcd at 1319.

[36] Reconsideration Order, 2 FCC Rcd at 6288.

[37] See Contel's Petition for Reconsideration filed in Docket 86-111, on April 3, 1987.

[38] MCI Comments at 8-10.

[39] *Id.*

[40] IBM Comments at 4.

[41] Contel Reply at 7.

[42] *Id.*

[43] Reconsideration Order, 2 FCC Rcd at 6285.

[44] *Id.* at 6288.

[45] Contel Reply at 10.

[46] Contel should also clarify in its revised manual whether nonregulated activities that use the network will be charged tariff rates for that use.

[47] Contel Manual at 8-10.

[48] *Id.* at 18-38. All changes that we order to the cost allocation of USOA accounts should be reflected in amendments to both the narrative and the table, where applicable.

[49] AT&T Comments at 2.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 3.

[53] *Id.*

[54] Contel Reply at 9.

[55] *Id.*

[56] *Id.*

[57] See Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 109, 116 (1988) (Bell Atlantic Order). We note, however, that at such time that Contel's three-year forecasts of future operations indicate a planned sharing of network plant for regulated and nonregulated operations, it must amend its manual to provide for a forward-looking allocator.

[58] Joint Cost Order, 2 FCC Rcd at 1328.

[59] ARMIS Order, 2 FCC Rcd at 5775.

[60] Carriers must include these accounts in future releases of Automated Reporting Requirements reporting formats.

[61] AT&T, in its comments, observed that Contel did not address several accounts in its cost manual. AT&T Comments at 6. In its reply, Contel represents that it will amend its manual to include those accounts. Contel Reply at 11-12. Additionally, by letter of December 4, 1987, Contel notes that it will further amend its manual to include for more accounts. See letter from Lawrence P. Keller, Director-Federal Regulatory, Contel Corporation, to William J. Tricarico, Secretary, Federal Communications Commission, dated December 4, 1987.

[62] MCI Comments at 9.

[63] *Id.*

[64] Contel Reply at 8.

[65] *Id.*

[66] *Id.*

[67] *Id.* at 8-9.

[68] AT&T Comments at 5.

[69] Contel Reply at 11.

[70] AT&T Comments at 4-5.

[71] Contel Reply at 10.

[72] See paragraph 26, n. 57, supra.

[73] See Contel's Manual at 21-23.

[74] Joint Cost Order, 2 FCC Rcd at 1326.

[75] AT&T Comments at 3-4.

[76] *Id.*

[77] See paragraph 26, n. 57, supra.

[78] We require Contel to serve copies of its revised manual on all parties to the Contel manual proceeding.

[79] One copy will be available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[80] See, e.g., Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Non-regulated Costs, 3 FCC Rcd 433 (1988).

[81] A stay of the effectiveness of a proposed change will not extend beyond 180 days.

[82] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: August 2, 1988

NATIONAL TELEPHONE SERVICES, INC., PETITIONS FOR DECLARATORY RULING THAT PAYMENTS OF DIAL "0" COMMISSIONS BY DOMINANT CARRIERS MUST BE TARIFFED

National Telephone Services, Inc. (NTS), a provider of operator services, has filed a petition seeking a Commission declaration that dominant carriers must include all "0" commissions in tariffs filed in accordance with Section 203 of the Communications Act (the Act). Specifically, NTS contends that American Telephone and Telegraph Company (AT&T) dominates the operator service industry and that AT&T's "0" commissions must be tariffed under Section 203(a) and (c)(3) of the Act. In the alternative, even if the Act does not compel AT&T to tariff the commissions, NTS asks the Commission to exercise its discretion under Section 203(a) of the Act to order AT&T to tariff its "0" commissions. According to NTS, AT&T's current commission practices are unreasonable and unreasonably discriminatory in violation of Sections 201(b) and 202(a) of the Act. Comments on the NTS petition must be filed within 30 days after the release of this Public Notice, and Reply Comments within 10 days thereafter. All filings concerning this petition should refer to File No. ENF-88-12.

Copies of the petition and any subsequently filed documents in this matter may be obtained from International Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20036, (202) 857-3800. NTS's petition and other documents will also be available for review and copying in Suite 6206, 2025 M Street, N.W., Washington, D.C. 20554.

For further information, contact Patricia Bowman at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE GTE TELEPHONE OPERATING COMPANIES — Transmittal No. 292

Petition for Waiver of Various Sections of Part 69 of the Commission's Rules and Regulations
Revisions to Tariff F.C.C. No. 1

MEMORANDUM OPINION AND ORDER

Adopted: July 18, 1988; Released: August 2, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On August 21, 1987, the GTE Telephone Operating Companies (GTOC) filed a petition for waiver of various sections of Part 69 of the Commission's Rules, 47 C.F.R. §§ 69.1, *et seq.*, in order to enable General Telephone Company of Florida (GTFL) to offer a new optional access service called Preferred Switched Access (PSA).[1] Concurrent with its petition, GTOC filed revisions to its Federal Access Service tariff, Tariff F.C.C. No. 1, to state the rates and terms and conditions for PSA. These revisions were filed under Transmittal No. 292.[2] By a Public Notice released September 1, 1987 this Bureau invited public comment on GTOC's petition for waiver. Thirteen parties filed comments and seven parties filed reply comments. [3]

2. For the reasons stated herein, we deny the petition for waiver and reject the pending tariff revisions. We direct GTOC to remove the rejected material from its tariff not later than ten days from the release date of this Order.

II. BACKGROUND

A. Access Charge Proceeding

3. Part 69 of the Commission's Rules establishes a system of tariffed access charges for the recovery by local telephone companies of most interstate costs.[4] The history of the access charge proceeding has been summarized by the Commission many times.[5] As the Commission has also noted on many occasions, the primary goals of the access charge proceeding are to eliminate pricing discrimination; promote economic efficiency; deter uneconomic bypass; and preserve universal telephone service.[6] Although the Commission has revised Part 69 on several occasions, the purposes of the rules remain unaltered.

B. Alternative Cost Recovery Proposals

4. During the last three months of 1985, petitions for waiver of various sections of Part 69 were filed by five of the seven Regional Bell Operating Companies (BOCs). All of these proposals sought to collect the interstate nontraffic sensitive (NTS) carrier common line revenue requirement by means other than the nationally uniform carrier common line charge that is assessed on interstate access minutes of use. In addition, one BOC, New England Telephone and Telegraph Company (NET) sought to recover its interstate traffic sensitive (TS) revenue requirement, as well as the NTS revenue requirement, through direct charges to end users.[7]

5. The BOCs all argued that the cost recovery mechanisms established by the access charge rules are uneconomic and thus create incentives for interecxhange carriers (IXCs) and others to seek bypass alternatives. In the *NTS Guidelines Order* the Commission denied the petitions for waiver, as filed, but established guidelines for the implementation of alternative interim NTS cost recovery plans.

6. The Commission has, of course, long recognized that the recovery of fixed costs through usage-based charges raises questions of economic efficiency and therefore indicated that it had some sympathy with the BOCs' objective of moving to a more economically rational cost recovery system. The Commission noted in the *NTS Guidelines Order* that it had developed a weighty record on the impact on the network of the uneconomic recovery of NTS costs. In contrast, the Commission stated, "[w]e have no similar record concerning the recovery of TS costs." *NTS Guidelines Order* at para. 140. The Commission noted, however, that "our current TS access charges, if uneconomic, may be a significant cause of uneconomic bypass." *Id.* at para. 144. It was on this basis that the Commission agreed to consider local exchange carrier (LEC) proposals for TS pricing flexibility.[8]

7. NET and New York Telephone (NYNEX) subsequently submitted a revised proposal incorporating a volume discount and direct end user billing of TS access charges. The Commission concluded that it was not clear that direct end user billing of TS access charges would be more economically efficient than the current practice of recovering such charges from IXCs. Indeed, the Commission found that NYNEX's plan might be less economically efficient than the existing transport rate structure.[9] The Commission also found that, although there is considerable academic support for the proposition that it is most economically efficient to price telecommunications services in reference to the long run marginal costs of providing such services, there are considerable practical problems as well. Based on the record before it, the Commission concluded that it was not possible to determine whether NYNEX's proposed tapered rate schedule was reasonable or had any relationship to the goals of economic efficiency and decreasing uneconomic bypass incentives.[10]

III. DESCRIPTION OF THE GTOC FILING

8. Against this background, GTOC filed its petition for waiver. GTOC emphasizes that it created PSA as an optional service that it believes will better serve the needs of a segment of GTFL's market. It also stresses that its proposal was not designed to be an "alternative NTS cost

recovery plan," and thus claims that the earlier guidelines should not apply. The following paragraphs briefly outline the major features of GTOC's proposal.

A. Service Configuration

9. GTOC states that PSA would allow end users the option of using switched access in conjunction with IXCs' "unbundled" service offerings such as AT&T's Megacom, Megacom 800 and SDN, MCI's Prism, and US Sprint's UltraWATS. Traffic could be originated over either common lines or special access lines connected to a "PSA-designated" end office. From there, the traffic would be routed over switched access facilities to the access tandem. Finally, the traffic would be delivered over a dedicated connection to the appropriate switch port at the IXC's "Customer Designated Location" or point of presence (POP). Customers could originate traffic from up to ten locations and could terminate 800-type traffic to up to three locations.[11]

B. Rate Structure

10. PSA is a TS access service that includes time of day and volume discounts. GTOC claims that PSA would increase the net revenue of interstate switched access for GTFL. GTOC would charge the customer a minimum monthly usage charge of1500 per basic PSA arrangement. This would allow the customer to originate traffic from three locations and terminate traffic to three locations. Each additional originating location from four through ten would increase the minimum monthly charge by150. No additional terminating locations would be permitted. Usage charges would be assessed at the rate of 0.02 per minute during the day rate period and would be discounted 35 and 50 percent in the evening and night/week end rate periods, respectively. In addition, all usage above the monthly minimum would be discounted 55 percent. Time of day discounts would still apply to this usage. Finally, GTOC would not charge the Carrier Common Line Charge for PSA usage. Instead, GTOC proposes to charge each customer that designated common lines as capable of accessing PSA a special NTS charge of25.87 per month.[12] This charge, which would be applied per customer, rather than per line, is intended to recover revenues that GTOC estimates would be lost to the NECA common line pool as a result of PSA.[13] *Id.* at 8-10.

C. Justification

11. GTOC argues that it should be allowed to offer PSA because it believes its customers would benefit in a number of ways. First, it argues that it may be more efficient to use PSA to aggregate traffic from several locations using the switched network than to use dedicated facilities to perform the hubbing function. GTOC also contends that PSA would be more flexible in adapting to customers' needs than dedicated facilities and would be more reliable due to the inherent redundancy of the switched network. In addition, GTOC notes that some of its potential PSA customers believe that it would be more convenient to deal directly with the LEC to purchase access. Finally, GTOC states that other network services could be integrated with PSA. *Id.* at 12-15.

12. GTOC asserts that customers of other access services will not be harmed by PSA and proposes that the Commission apply a net revenue test to satisfy itself that PSA customers will not be cross-subsidized by other ratepayers. GTOC argues that GTFL faces effective competition in the market for access to large business customers and asserts that non-uniform volume discounted pricing is appropriate for TS access given the cost and demand characteristics of the service. According to GTOC, this is especially true for PSA because it will be provided out of digital end offices connected to a digital access tandem and transported primarily over fiber optic facilities. GTOC asserts that non-uniform pricing would allow it to bring marginal prices closer to the economic marginal cost of the service, thus reducing the price distortion that it contends is caused by overhead costs while still recovering its total revenue requirement. *Id. at 16-18; 21-22.*

IV. COMMENTS

13. A number of LECs filed comments urging the Commission to grant GTOC's petition. Two large businesses with a substantial presence in the Tampa area served by GTFL also filed letters supporting GTOC's petition. These parties indicate that they are interested in subscribing to PSA and argue that it would provide them a valuable access option.[14] Interexchange carriers, on the other hand, oppose GTOC's petition for many reasons. Other parties also express reservations about GTOC's proposal. The issues raised by the parties include both broad policy issues and more narrow issues concerning the specifics of the proposal.

A. General Issues

14. A number of commenters argue that GTOC has not met its burden of proof in demonstrating that a waiver of the rules is justified. AT&T contends that the petition should be denied because GTOC has shown neither that the Commission's TS rules are uneconomic nor that the NECA common line pool would not be harme*See also* ALC Comments at 2-4. The National Telecommunications and Information Administration (NTIA) states that there is no precedent for granting TS pricing flexibility. It asserts that the filing raises a number of concerns and therefore recommends that the Commission address the questions raised by the PSA proposal in a Rule Making proceeding. NTIA states that this would allow for development of a more complete record. NTIA Reply Comments at 3.[15]

15. GTOC responds that it has demonstrated that the Commission's policies will be advanced and the public interest will be served by grant of its petition. GTOC also argues that waiver is appropriate, rather than a Rule Making proceeding, because PSA would be of limited applicability and thus does not necessitate a rule change. GTOC Reply Comments at 6.[16]

16. GTOC also contends that it is not required to show that the current TS rules are uneconomic. GTOC argues that all it is proposing to do is offer an optional access service and that the Commission Orders dealing with alternative NTS plans do not require that a LEC show that the rules are uneconomic in order to offer a new service. In summary, GTOC states that grant of its petition would serve the public interest because PSA offers customers an additional option without affecting any of the existing access options. *Id.* at 8-9.

17. The commenting LECs argue that the Commission should extend the principles of pricing flexibility to access services and approve optional pricing plans such as PSA.[17] In comments that are representative of this viewpoint,

NYNEX contends that pricing flexibility is imperative if the LECs are to make the most efficient use of the local switched network. In certain circumstances, NYNEX asserts, switched access may be economic, when measured on an incremental cost basis, as a means of access to unbundled IXC services but because the current access charges reflect fully distributed cost, large volume customers have an artificial incentive to use alternative means of access. NYNEX concludes that this harms both potential customers of such a service and remaining switched access customers. NYNEX Comments at 4-5. Other LECs concur in this view and also stress that LECs must be able to respond to customers' needs and competitive challenges. Ameritech Comments at 3; Cincinnati Bell Comments at 2.

18. The parties that oppose PSA in general also argue strenuously against GTOC's proposal that the net revenue test be applied to evaluate the service. The IXCs argue both that the net revenue test should not be applied in this case and that, if it were, PSA would fail. AT&T notes that GTOC has conceded that the OCP guidelines do not apply to LEC access pricing. AT&T contends that GTOC has provided no evidence that the OCP guidelines in general, and the net revenue test in particular, are an appropriate measure of the reasonableness of alternative LEC access charge plans. AT&T Comments at 10-11; AT&T Reply Comments at 7-9. MCI contends that a net revenue test based on long run costs of production of a service is meaningless since under GTOC's plan the revenue requirement for all GTFL switched access will be based on current separated interstate costs. MCI concludes that PSA will result in greater costs being assigned to the interstate jurisdiction[18] and in increased interstate TS costs to non-PSA switched access users. MCI Comments at 4-8. ALC also attacks GTOC's reliance on marginal cost pricing. ALC observes that substitute services for PSA use the same technology. According to ALC, there is no reason to attribute marginal investment costs and marginal expenses to PSA customers when others pay averaged rates. ALC Comments at 9-12.

19. The IXCs also present various analyses to show that PSA would fail the net revenue test if that test were applied.[19] AT&T notes in its reply comments that several commenters have shown that GTOC's proposed pricing will create economic distortions by applying incremental pricing selectively and giving customers the incentive to use switched access when special access would be more economic. AT&T concludes that the record demonstrates that the proposed PSA rates bear no relationship to the actual cost of providing the service. AT&T Reply Comments at 3-5. ALC argues that GTOC has not shown that PSA would pass the net revenue test under 1988 rates. ALC explains that rate increases for substitutable services will pressure end users to migrate to PSA and the resulting reduction in revenue could cause PSA to fail the test. *See also* MCI Comments at 12-15.

20. In response, GTOC contends that the net revenue test is an appropriate tool for evaluating PSA because GTFL faces growing competition in the market for interstate access, particularly for large business customers. *Id.* at 13-14. In addition, GTOC contends that the IXCs are arguing for application of a short run FDC standard even though the Commission found this standard to be inappropriate for OCPs. In any event, GTOC states that PSA revenues are greater than the separated costs for the service. Accordingly, claims that PSA would be cross-subsidized by other services under the rates filed in October 1987 are incorrect, according to GTOC. *Id.* at 14-22.

B. PSA-Specific Issues

1. Benefits of PSA

21. GTOC argues that PSA would benefit customers in a number of ways. These include aggregation of traffic from multiple locations, greater flexibility to respond to the customer's needs, and enhanced reliability. GTOC asserts that PSA might also enhance interexchange competition and that some customers believe that it would be more convenient to purchase access directly from the LEC. In addition, GTOC argues that PSA would provide benefits to the public at large. These benefits derive from the use of the switched network that PSA would encourage. PSA customers thus would be contributing to the recovery of switched network costs.

22. The LECs that commented in support of GTOC's proposal also assert that PSA would provide benefits to customers, generally agreeing with GTOC's representations. Ameritech's comments were fairly typical of the LECs' positions. For example, Ameritech argues that PSA would provide customers greater choice and convenience and would result in increased and more efficient use of the public switched network. In addition, Ameritech believes that PSA would benefit IXCs by increasing demand for their unbundled service offerings. SNET generally agrees with these comments and adds that PSA would benefit customers by holding down the cost of access service. SNET Comments at 6.

23. In contrast, MCI asserts that PSA would provide no advantages over existing access arrangements except for preferential pricing for certain customers. MCI Comments at 19-20. MCI also disagrees with the LEC's assertion that PSA would increase network efficiency. Rather, MCI asserts, PSA would cause an uneconomic shift from special access to switched access by GTFL's largest customers even though network engineering dictates that flat- rated, dedicated access is better suited to the needs of these customers. MCI observes that GTOC is applying long run incremental pricing to PSA, but not to special access and that price comparisons will therefore result in uneconomic decisions to purchase switched access. MCI Comments at 9-12.

2. Tariff and Rate Issues

24. The comments also raise many issues that relate to GTOC's proposed rates and other tariff terms. These include arguments that PSA will not recover its costs; that the proposed rate structure is discriminatory; that PSA would restrict resale in violation of Commission policy; and arguments concerning the effect that PSA would have on the NECA common line pool.

a. Cost Issues

25. GTOC includes material in the D&J submitted with its tariff which it asserts demonstrates that PSA would produce an increase in net revenue for the switched access category. A number of commenters argue, however, that the petition should be denied because PSA will not recover its costs. AT&T argues that PSA will not recover GTOC's interstate TS costs or even "the year-over-year cost of an increment of demand associated with the provi-

sion of PSA." AT&T Comments at 5. AT&T states that support material filed with GTOC's 1988 annual access tariff filing "suggest[s] an average year-over-year TS cost assigned to the interstate jurisdiction of 10.9 cents per minute."[20] AT&T concludes that GTOC's PSA TS rates appear to be below relevant costs and that, as a result, GTOC's non-PSA switched access customers will be required to pay approximately nine cents per minute of TS costs that PSA customers will not pay. AT&T Comments at 5-6, App. A.[21]

26. Other commenters also argue that PSA will not cover its relevant costs and thus will be subsidized by rates for other switched services. Some argue that the plan would result in increased costs for non-PSA customers due to increased cost allocations to the switched access category. Florida Association of Concerned Telephone Companies (FACT) Comments at 8-9; MCI comments at 4-8. McCaw Cellular notes that the data in GTOC's PSA filing that purport to show that its proposed PSA rates would recover the costs of the service are inconsistent with representations GTFL has made in cellular interconnection proceedings before the Florida PSC. McCaw states that GTOC claimed that the cost figures it used in that proceeding were based on interstate access cost studies. McCaw Comments at 10-13.

27. In response, GTOC asserts that the cost estimates developed by AT&T and MCI are clearly incorrect because those estimates are based on inappropriate methodologies and contain computational errors. GTOC also asserts that MCI and FACT are arguing for the application of a short run FDC standard. GTOC reiterates its contention that the net revenue test, based on long run incremental costs, is the appropriate tool for evaluating PSA. GTOC Reply Comments at 18-22. Moreover, GTOC argues that, contrary to AT&T's assumption, PSA will not increase the demand for common lines because its target customers already have the number of lines those customers need to handle existing traffic.[22] *Id.* at 41-44.

b. Rate Structure Issues

28. A number of commenters argue that the proposed PSA rate structure is unreasonably discriminatory. FACT, for example, asserts that PSA discriminates in favor of large users and against IXCs. FACT argues that the IXCs would lose control over their own networks if GTOC is allowed to offer PSA. FACT also argues that PSA would be disproportionately expensive for small IXCs who would have to tie up switch ports in order to capture a portion of an end user's unbundled interexchange traffic. FACT Comments at 3-5.

29. MCI argues that the PSA dedicated connections between the access tandem and the IXC's POP are functionally and technically equivalent to existing special access connections but GTOC proposes to price PSA on a usage basis. MCI Comments at 2-3. MCI also contends that GTOC proposes to discriminate between like services – PSA and Feature Group D (FGD) access – without showing that the costs of providing PSA are lower. According to MCI, the facilities that PSA would utilize are physically identical to the facilities used for FGD switched access. At the same time that GTOC proposed to charge PSA customers discounted rates, MCI notes that GTOC proposed to increase switched access charges for its other customers by over 19 per cent. MCI concludes that GTOC should not be permitted to apply different pricing philosophies to special access, switched access and PSA.[23] *Id.* at 15-16. In a similar vein, McCaw argues that PSA functions are identical to the interchange of cellular/landline traffic and concludes that PSA should therefore be available to all similarly situated entities, not just to end users. McCaw Comments at 4-7.

30. Ameritech, on the other hand, asserts that GTOC's pricing approach is appropriate and will encourage large users to remain on the switched network. Ameritech Comments at 2-3. SNET contends that volume discounts are not discriminatory and are offered to the entire body of ratepayers, although by definition such discounts can only be provided to a small qualifying group of customers. SNET Reply Comments at 4. The Florida Public Service Commission (Florida PSC) states that it intends to have intrastate switched access charges billed to end users rather than to IXCs and to include bulk discounts for large volume customers. Florida PSC asserts that all customers benefit when the largest customers stay on the switched network and contribute to total costs, and it concludes that marginal pricing is an appropriate means of achieving this end. Florida PSC Comments at 3.

31. GTOC argues in response to its critics that the proposed rates reflect the economic cost of providing switched access and therefore send a more efficient price signal to PSA customers. According to GTOC, much of this traffic would be served by other carriers if it did not offer PSA; volume discounts allow switched access to be competitive with access alternatives. GTOC Reply Comments at 26.[24]

32. In addition, GTOC contends that volume discounts would not be discriminatory even if PSA and FGD were like services, which, it asserts, they are not.[25] GTOC notes that the Commission has allowed the use of multi-part tariffs and minimum monthly charges for AT&T's OCPs. *Id.* at 26-27. GTOC also observes that it already provides volume discounts, noting, for example, that its DS-1 service provides capacity equivalent to 24 voice grade channels at a substantial discount as compared to the charges that would apply if the channels were purchased separately. GTOC contends that PSA offers a volume discounted switched access service, comparable to the aforementioned special access volume discount.[26] *Id.* at 28-30. Finally, GTOC reiterates its contention that PSA will provide new opportunities for small IXCs and asserts that it will not be necessary for these carriers to tie up valuable switch ports. *Id.* at 33.

c. Restrictions on Resale

33. Several commenters argue that PSA unreasonably restricts resale in two respects. First, commenters contend that the restriction on the number of locations that can be designated to originate or terminate traffic constitutes a restriction on resale. *See* ALC Comments at 14-15. Indeed, McCaw contends that the only apparent reason for this restriction is to limit narrowly the class of parties that may use PSA. McCaw Comments at 8. MCI argues that what it alleges are non-technical limitations on the number of customer locations permitted on a PSA arrangement will prevent the marketplace from undermining non-cost based PSA rates. MCI Comments at 17.

34. In addition, commenters argue that GTOC's failure to provide Automatic Number Identification (ANI) with PSA unreasonably restricts resale. MCI, for example, notes that if ANI is not provided, a reseller would not be able to bill originating calls to the end user. *Id.* at 19. FACT

contends that smaller IXCs could be competitive if they could resell PSA but that the lack of ANI will preclude resale. FACT Comments at 5-8.

35. GTOC argues that PSA is fully subject to resale. According to GTOC, any customer may purchase PSA and use it for any interstate access application. Moreover, customers may purchase as many PSA arrangements as they wish. Thus, the hubbing feature of PSA is sold in units of ten customer locations. GTOC concludes that the limitation on the number of customer locations is not a physical limit on the amount of PSA that can be resold but a part of the rate structure through which GTOC proposes to charge for the hubbing feature. GTOC Reply Comments at 33-34. GTOC also contends that PSA can be resold in precisely the same manner as any existing access arrangement.[27] GTOC notes that PSA is a volume discounted service, like WATS, and each PSA arrangement must have a certain volume of traffic in order to make the service economical. That a reseller's customers may not have sufficient traffic to make the service economical for them does not mean that PSA does not comply with the Commission's policies on resale, GTOC states. In fact, GTOC asserts, PSA provides more opportunities for resale than existing access services do. *Id.* at 34-36.[28]

36. GTOC also argues that it has never claimed that PSA is a form of FGD access. GTOC states that unbundled IXC services do not now receive ANI because those services are used with dedicated access and asserts that some of these services cannot even accept ANI. GTOC concludes that "[t]o argue that ANI is essential to successful resale of access for these services is absurd." *Id.* at 38. Finally, GTOC notes that PSA offers a certain set of features at a discounted price: at the proposed discounted price, ANI is not part of the service. *Id.*[29]

d. Effect on NECA Pool

37. Finally, a number of commenters express concern that PSA would harm the NECA common line pool. In particular, NECA argues that the pooling structure cannot be maintained if carriers can devise alternative switched access offerings and obtain an exemption from the obligation to assess the Carrier Common Line Charge. NECA therefore urges the Commission to require GTOC to fulfill the reporting obligations essential to the operation of the pool and to continue to participate in common line settlements based on a uniform common line pool rate of return. NECA Comments at 4. NECA also indicates, however, that GTOC has agreed to assess all originating PSA minutes the originating CCLC. Given this modification, NECA states that it does not object to PSA. *Id.* at 4-5. NTCA recommends that action on PSA be deferred until April 1, 1989, so that the carefully constructed pooling mechanism will not be disrupted. NTCA Comments at 1-3.

38. AT&T argues that PSA will increase the interstate NTS cost allocation due to migration of users from WATS and special access to PSA. AT&T concludes that the proposed flat NTS charge will not recover these costs. AT&T Comments at 7-8, App. B. *See also* MCI Comments at n. 15.[30]

39. GTOC makes three main arguments in response. First, GTOC asserts that the flat NTS charge is designed to recover the revenue that would be lost to the pool as a direct result of PSA. Second, GTOC argues that of all the minutes that are predicted to migrate to PSA, only 1.4 per cent are currently subject to the CCLC. The total contribution to the pool from these minutes is less than5000, GTOC asserts. Finally, GTOC argues that there will be no increased demand for common lines, and thus no increase in the interstate NTS cost allocation, because customers already have the number of lines that they need. GTOC Reply Comments at 39-43.[31]

V. DISCUSSION

40. GTOC has presented PSA as an optional access service that it believes would serve the needs of certain of its large business customers. GTOC argues that PSA would better meet the needs of this class of customers than existing access services and also contends that PSA would not harm users of other access services. In addition, GTOC portrays PSA as a means of enhancing the value of the switched network. These are, of course, laudable goals. Nevertheless, for the reasons stated below, we deny GTOC's petition and must, as a result, reject the pending tariff filing. We conclude that GTOC has not demonstrated that the waiver it seeks is warranted either under the standards the Commission has established for waivers of the access charge rules to permit LEC pricing flexibility or more general waiver standards that have been applied in other contexts. Accordingly, we deny the petition.

41. Courts have observed:

> An applicant for waiver faces a high hurdle even at the starting gate. 'When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.'[32]

The Commission has previously addressed the question of waiver of Part 69 of the Rules to permit LECs access pricing flexibility. In the *NTS Guidelines Order* and the *NYNEX Order* the Commission specifically addressed the types of showings it deemed essential to a waiver of both the NTS and TS portions of the access rules. GTOC contends that PSA should not be evaluated under the standards developed for alternative NTS proposals because PSA is not an alternative NTS cost recovery plan.[33] Although GTOC's assertion that PSA is not an alternative NTS cost recovery plan is basically correct,[34] the *NTS Guidelines Order* and the *NYNEX Order* are the Commission's latest pronouncements on the question of waiving Part 69 of the Rules in order to grant LECs pricing flexiblity. Therefore, it is appropriate to examine pricing flexibility proposals in the light of the standards articulated in those orders.

42. Under the standards established in those orders, GTOC must demonstrate (1) that the TS rules are uneconomic and (2) that the uneconomic recovery of TS costs results in substantial, localized bypass. GTOC does not expressly address these questions.[35] GTOC's petition contains scarcely a single page of material labeled "Basis for Waiver" in which it attempts to demonstrate a legal foundation for its request. Neither this portion of the petition, nor any other part of GTOC's various pleadings, argues that the TS rules are uneconomic or that they result in uneconomic bypass. Instead, GTOC merely states that "a waiver is an appropriate mechanism to authorize this service" and that it believes "that offering Preferred Switched Access is in the public interest." GTOC Petition at 24-25.

43. While GTOC observes that "the Commission has previously recognized [in the *NTS Guidelines Order*] that a waiver is an appropriate approach for allowing carriers limited flexibility to respond to the needs of the market with new services," *id.* at 24, GTOC ignores the conditions imposed by the Commission in that same Order for granting such flexibility. Moreover, GTOC's characterization of the purpose of the *NTS Guidelines Order* misses the mark. The Commission stated that it was prepared to grant waivers of the NTS cost recovery rules under certain circumstances because it had developed a weighty record on the impact on the network of the uneconomic recovery of NTS costs. In contrast, the Commission stated, "[w]e have no similar record concerning the recovery of TS costs." *NTS Guidelines Order* at para. 140. Despite the lack of a record regarding whether the TS rules are uneconomic, the Commission observed that "our current TS access charges, if uneconomic, may be a significant cause of uneconomic bypass." *Id.* at para. 144. The Commission therefore agreed to consider LECs' proposals for TS pricing flexibility, but cautioned that further justification than New England Telephone had provided would be necessary. Moreover, in the *NYNEX Order*, the Commission concluded that the economic efficiency of recovering TS costs directly from end users had not been demonstrated. *NYNEX Order* 2 FCC Rcd at 66-67.[36] Aside from its unsupported assertion that customers might need fewer lines using PSA than using existing access services, GTOC has not attempted to show that PSA would enhance economic efficiency or address a significant bypass threat in its area. Furthermore, as MCI argues, for substantial traffic volumes, such as those generated by PSA's target customers, dedicated access may be the most efficient way to transport traffic to an IXC POP. The reason the Commission requires a showing that the TS access rules are uneconomic and are causing distortions in customer selection of access facilities before it grants waiver of those rules in order to provide pricing flexibility is to guard against the waiver process itself becoming the source of economic distortions. If, as MCI asserts, the reason PSA would appear cheaper to some end users than special access is that different pricing methodologies are applied to the two services (incremental to PSA, fully distributed to special access) PSA might increase, rather than reduce, uneconomic customer choices. We thus conclude that GTOC has not satisfied the requirements established by the Commission for petitions for waiver of Part 69 that seek to establish pricing flexibility for access services.

44. The *NTS Guidelines Order* and the *NYNEX Order* do not, of course, preclude more limited waivers of particular access charge rules that are justified upon some basis other than avoiding uneconomic effects which generally result from application of the access charge rules. A carrier may always invoke the more general waiver criteria described in the *WAIT Radio* opinion to justify a waiver of any Commission rule. That opinion said that an agency may "take into account considerations of hardship, equity or more effective implementation of overall policy,"[37] but observed that an applicant must plead with particularity[38] and that the waiver request should be based upon "the assumed validity of the general rule. . . ."[39]

45. Although GTOC's proposed service would be used by a limited number of customers in a limited geographic area, the arguments that GTOC has presented to justify such a waiver do not appear to be based upon the "assumed validity" of the present access charge rules. For example, GTOC contends that the use of a net revenue test for access pricing would produce optimal results. GTOC fails to note that a net revenue test is significantly different from the pricing methods that the Commission adopted in 1982 for access pricing generally. GTOC also claims that the customers who would be likely to use PSA would benefit from such an option, but fails to note that the Commission's decision to adopt the access charge rules was based in part upon the conclusion that some customers had benefited unduly from some of the options that were available before the access charge rules were implemented. Such broad policy arguments would be appropriate in a petition for Rule Making, but do not provide the type of waiver justification described in *WAIT Radio*.

46. Even if we entertained access waivers that are not justified on the basis of any of the established criteria, we could not conclude that GTOC has demonstrated that PSA would produce public benefits. First, as GTOC itself notes, PSA is intended to serve only a very few customers.[40] GTOC argues that PSA would provide a number of benefits to these customers, but the principal advantage of PSA appears to be its heavily discounted rate structure.[41] Although the record suggests that the target customers for PSA have expressed an interest in obtaining the service, GTOC has not demonstrated that providing some benefits to a small number of customers justifies the departure from Commission policy that GTOC's petition represents. The other purported benefits of PSA, *i. e.*, the allegedly greater flexibility and enhanced reliability of the service appear to be uncertain but in any event of marginal importance. It does appear that PSA would permit customers to use common lines to access unbundled IXC services which, at present, can be accessed only over dedicated facilities. The importance of this feature to the large customers for whom PSA was designed is certainly questionable in view of the fact that these customers presently use dedicated facilities to access interexchange services and, by GTOC's own admission, would continue to do so.[42] In any event, we do not find GTOC's contention that some of its customers might find this functionality attractive a sufficiently compelling argument to support waiver of Part 69. Finally, while GTOC asserts that the inherent redundancy of the switched network does provide somewhat greater reliability than dedicated access, it has not indicated that service reliability (or, for that matter, flexibility) has been a problem for its target customers.

47. We also cannot agree with GTOC's claim that waiver is appropriate merely because customers will be afforded a new option in access services. This proposed tariff would present some difficult questions if the Commission had not adopted relevant rules. For example, although the Commission has stated that the use of volume discounts in access tariffs to prevent bypass does not necessarily constitute unjust or unreasonable discrimination in violation of the Communications Act, GTOC has not proposed PSA's volume discounted rate structure as a measure to prevent bypass. The question of whether a volume discount would be permissible under the circumstances presented by the petition thus raises substantial questions in our view. Also, the limitation on the number of end user locations and the lack of ANI raise questions regarding unlawful restrictions on resale of PSA.[43] The Commission has long fostered resale as an effective check on the pricing of telecommunications services.[44]

48. The record also raises other questions concerning the proposed PSA rate structure. For example, GTFL's rates for transport when offered as part of a regular switched access service are highly distance-sensitive[45] but PSA rates would not vary with distance despite the fact that PSA traffic would use the same or similar transport facilities. GTOC explains in its D&J that it omitted this element from its rate structure due to "a practical limit on the number of variables in the tariff" and also asserts that "[w]hile it is true that switched transport costs vary with distance, the importance of this relationship is limited for PSA because the GTFL serving area is relatively compact, and because the transport for PSA will be primarily via existing fiber optic routes." GTOC D&J at 18. It is not clear that these factors distinguish PSA from switched access or otherwise justify the proposed disparity in rate structure.[46] In addition, it appears that PSA would increase the allocation of some costs to the interstate jurisdiction, but it is not clear that PSA would generate sufficient revenue to cover this increased cost allocation.[47] For all of the foregoing reasons, we conclude that GTOC has failed to carry its burden of demonstrating that waiver of the Rules is warranted.

VI. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that the petition for waiver filed by the GTE Telephone Operating Companies IS DENIED.

50. IT IS FURTHER ORDERED that the captioned tariff revisions of the GTE Telephone Operating Companies ARE REJECTED. GTOC is directed to file further revisions to its Tariff F.C.C. No. 1 for the purpose of removing the rejected material not later than ten days after the release of this Order. For purposes of this filing, Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59 ARE WAIVED and Special Permission No. 88- 329 IS ASSIGNED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX A

The following parties filed comments on the Petition for Waiver of GTE Telephone Operating Companies:

ALC Communications Corporation
American Telephone and Telegraph Company
Ameritech Operating Companies
Cincinnati Bell Telephone
Florida Association of Concerned Telephone Companies
MCI Telecommunications Corporation
McCaw Communications Companies, Inc.
NCNB National Bank
National Exchange Carrier Association
National Telephone Cooperative Association
Nielsen Media Research
NYNEX Telephone Companies
Southern New England Telephone Company

The following parties filed reply comments:

American Telephone and Telegraph Company
Central Telephone Company
Florida Public Service Commission
GTE Telephone Companies
MCI Telecommunications Corporation
National Telecommunications and Information Administration
Southern New England Telephone Company

FOOTNOTES

[1] In an appendix to its petition, GTOC lists the specific rule sections that we would have to waive to allow it to offer PSA. It lists Sections 69.4, 69.5, 69.101, 69.105-109, 69.111, 69.201, 69.205 and 69.207, 47 C.F.R. §§ 69.4, 69.5, 69.101, 69.105-109, 69.111, 69.201, 69.205 and 69.207. Several of these rule sections have been revised or removed by the Commission. *See Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations*, CC Docket No. 87-113, 2 FCC Rcd 6447 (1987). GTOC's petition would still require waiver of relevant portions of the revised Part 69.

[2] Transmittal No. 292 was originally scheduled to become effective on October 5, 1987 on 45 days' notice. Section 203(b)(2) of the Communications Act, 47 U.S.C. § 203(b)(2), prohibits the Commission from requiring a notice period in excess of 90 days before tariff revisions can become effective. The pending tariff revisions would be patently unlawful, however, unless the requested waivers were granted. As a result, GTOC has voluntarily deferred the effective date of its tariff revisions on several occasions. The pending tariff revisions are now scheduled to become effective on October 1, 1988. *See* GTE Telephone Operating Companies, Tariff F.C.C. No. 1, Tr. No. 415, filed June 28, 1988.

[3] A list of commenters is included as Appendix A to this Order.

[4] *See* MTS/WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (*Access Charge Order), modified on reconsideration*, 97 FCC 2d 682 (1983) (*First Reconsideration Order), modified on further reconsideration*, 97 FCC 2d 834 (1984) (*Second Reconsideration Order), aff' d in principal part and remanded in part, National Ass' n of Regulatory Utility Comm' rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied* 105 S.Ct. 1224 (1985), *modified on further reconsideration* 49 Fed. Reg. 46,383 (1984), 50 Fed. Reg. 18,249 (1985), *aff' d on further reconsideration*, 50 Fed. Reg. 43,707 (1985).

[5] *See , e. g.*, Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, FCC 86-145, released Apr. 28, 1986 (*NTS Guidelines Order)* at paras. 3-8; recon. granted in part, 2 FCC Rcd 28 (1987) (*NTS Guidelines Reconsideration).*

[6] *Id.* at n. 15.

[7] For a description of these proposals, *See NTS Guidelines Order*, at paras. 9-22.

[8] Due to the state of the record on this issue, and other potential problems associated with the NET proposal, the Commission concluded that it would require further justification for any proposal incorporating direct end user billing of TS access charges. *Id.* at para. 144.

[9] Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, 2 FCC Rcd 61, 66-67 (1987) (*NYNEX Order).*

[10] *Id.* at 67.

[11] GTOC Petition at 6-8. Further description of the service configuration, rate structure and various other feature of the proposed service are contained in the Description and Justification (D&J) to GTOC's Tr. No. 292.

[12] This charge would be in addition to the subscriber line charge applicable to such common lines.

[13] In making this calculation, GTOC assumes that the vast majority of a PSA customer's interstate traffic is now carried over WATS, Megacom or similar services so that the only effect on the carrier common line pool from a customer's use of PSA would be from the loss of revenues associated with minutes that now overflow from the customer's WATS or Megacom lines to MTS or MTS-like services.

[14] NCNB Comments at 1; Nielsen Media Research Comments at 1.

[15] NTIA did not file an initial set of comments. NTIA filed its reply comments on November 6, 1987. This was the date originally established by this Bureau for the filing of reply comments. In response to a request from GTOC, however, this deadline was extended to November 13, 1987. As a result of NTIA's early filing of its reply comments, other parties, such as GTOC, were able to respond to the NTIA arguments in their replies.

[16] MCI, in contrast, asserts that GTOC has made no attempt to show how the public interest would be served and thus fails to meet the standard for waiver. MCI also opines that the LECs commenting in support of the proposal are interested in PSA only as precedent for offering their own below cost alternative access plans. MCI Reply Comments at 7.

[17] Although few of the commenters address pricing flexibility directly, the discussion in LEC comments of GTOC's request that the net revenue test, developed in the *OCP Guidelines Order*, be applied to PSA implies that LECs should be granted more flexibility. *See Guidelines for Dominant Carriers MTS Rate Structure Plans*, FCC 85-540, released Oct. 17, 1985. Other commenters oppose such flexibility. For example, ALC argues that GTOC is different from an interexchange carrier in that it is a "monopolist" with the ability and the incentive to raise prices. ALC characterizes PSA as price manipulation. ALC Reply Comments at 5-9.

[18] Under the Commission's separations rules, costs are apportioned between the interstate and intrastate jurisdictions on the basis of a variety of factors. Many of these factors reflect the relative use of the telephone company's facilities. *See* 47 C.F.R. Part 36.

[19] AT&T includes a chart in its comments that it asserts shows that PSA would not pass the net revenue test if the cross-elastic effects of PSA on special access were considered. AT&T Comments at App. C.

[20] AT&T notes that GTFL's 1988 interstate TS revenue requirement and interstate TS minutes are projected to increase by31.7 million and 290 million minutes, respectively. By dividing the increase in GTFL's interstate TS revenue requirement by the increase in interstate TS minutes AT&T derives GTFL's "average year-over-year cost assigned to the interstate jurisdiction" of 10.9 cents per minute. AT&T Comments at 6.

[21] AT&T does not indicate what it believes the rate for PSA should be.

[22] GTOC also states that most prospective customers indicated that they would begin to take the service by simply designating their existing special access lines (SALs) as PSA lines and thus would not require any additional common lines.

[23] MCI states that GTOC has priced special access at above cost rates.

[24] GTOC makes no attempt to elaborate upon or quantify this bypass threat in its area either in its petition or in its reply comments.

[25] GTOC states that PSA offers new capabilities that are not available with FGD service and, conversely, that PSA does not perform some of the functions of FGD. *Id.* at 27-28. GTOC does not elaborate on these capabilities. GTOC's petition makes clear, however, that one of the main functions of PSA is to allow end users to access unbundled IXC services over the switched network, which is not possible using ordinary switched access.

[26] We note that, apparently, not all LECs would agree with this characterization. In its Direct Case in CC Docket No. 88-136, the pending investigation of certain LECs' individual case basis (ICB) rates for DS3 service, Southwestern Bell argues that these rates do not constitute a volume discount for DS1 service as that term is traditionally used. Direct Case of Southwestern Bell Telephone Company, CC Docket No. 88-136, filed Apr. 26, 1988 at 17-18.

[27] GTOC states that the reseller can order PSA service to be provided at the customer's premises, as an IXC would order DS-1 service for an end user to access the IXC's unbundled service offering. Alternatively, the reseller could order PSA to be provided at the reseller's location and aggregate usage from end users at that location by some other means.

[28] GTOC contends that the restriction on the number of end user locations per PSA arrangement is a result of limitations in the systems used to provide PSA including the billing system, order processing, and the scarcity of routing codes.

[29] SNET and Centel agree with GTOC's position that PSA is subject to resale. SNET Comments at 4; Centel Comments at 2.

[30] AT&T also asserts that PSA will attract users that would otherwise have migrated from WATS to AT&T's PRO America offerings. These services fully recover NTS costs, and would thus contribute to lowering the CCL rate. PSA would cause the pool to lose this benefit. AT&T Comments at 9. In response, GTOC states that it performed a careful demand analysis and found no customers for whom PRO America was a better alternative than the WATS-like service they currently use. Thus, GTOC concludes, PSA would not harm the pool as AT&T contends. GTOC Reply Comments at 43-44.

[31] GTOC also notes that, in order to alleviate NECA's concerns, it has agreed to capture, on a special study basis, the necessary data to determine the number of PSA minutes that are carried over common lines, and to remit to the pool on the basis of these minutes. *Id.* at 45. GTOC has not formally modified its proposal to reflect this change nor does GTOC explain how the proposed "special study" would be performed.

[32] WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969) quoting Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 664 (D.C. Cir. 1968).

[33] GTOC emphasizes that PSA is not intended to replace, *in toto*, the cost recovery rules prescribed by the Commission. In contrast to the BOCs' proposals, GTOC stresses, PSA is an optional service that customers may select if it better meets their needs than existing access services.

[34] It is not clear from the record precisely how GTOC would assess the CCLC, nor is it clear whether GTOC still proposes to assess the proposed25.87 NTS flat charge on customers that designate common lines as capable of originating PSA traffic.

[35] GTOC does argue that non-uniform, volume discounted pricing is appropriate for TS access service because of the cost and demand characteristics of the service. GTOC contends that this is particularly true for newer technologies such as digital switching and fiber optic transport. According to GTOC, pricing such a service at average cost will give customers a distorted price signal and will cause customers to purchase "less than the optimal

amount of the service or to purchase another service that is in reality more costly to provide." GTOC Petition at 21. We conclude that such general contentions, even if true, do not necessarily demonstrate that the TS access charge rules are uneconomic. Moreover, it is not clear that this one class of customers should receive discounted rates based on the cost characteristics of plant that is used to serve many customers.

[36] Indeed, as we have noted above, the Commission found that this approach might be less economically efficient than the existing cost recovery mechanism. *See supra* para. 7.

[37] WAIT Radio, *supra*, note 32, at 1159.

[38] *Id.* at 1157.

[39] *Id.* at 1158.

[40] According to MCI, GTOC's filing indicates that the total number of customers for PSA will be 18. MCI Reply Comments at n.12. GTOC does not appear to dispute MCI's contention and, in any event, acknowledges that few customers will subscribe to PSA.

[41] GTOC proposes to charge no more than0.02 per minute for PSA usage, assuming that the customer fulfills the minimum monthly usage requirement. GTFL's TS access charges are presently0.0417 per minute.

[42] GTOC argues in its reply comments that PSA target customers already have the number of special access and common lines necessary to handle existing traffic volumes and will keep these lines. In addition, GTOC states that PSA customers would not replace existing special access lines with PBX trunks, the type of common lines these customers use, because such a configuration would be three times as expensive. GTOC Reply Comments at 42-43. GTOC does not claim, nor could it, that PSA will encourage end users for whom dedicated access is uneconomic to use the bulk-rated IXC services for which PSA was designed.

[43] *See* Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 FCC 2d 167, (1980) (Resale Decision); recon. denied, 86 FCC 2d 820 (1981).

[44] *Id.* at 172.

[45] *See* GTOC Tariff F.C.C. No. 1, Section 4.6.2.

[46] GTOC has not proposed to provide PSA out of all of the end offices in its Florida serving area. Nevertheless, GTOC does not suggest that the serving area is more compact for PSA than for switched access. Moreover, although transport for PSA would be provided primarily over existing fiber optic routes, other customers also use these facilities. It is thus not clear that this fact justifies disparate rate treatment.

[47] GTOC does not discuss the separations effect of PSA in its D&J or in its petition. In response to arguments advanced by MCI and ALC, however, GTOC attempts to demonstrate that PSA would generate sufficient revenue to cover any increased allocation of costs to the interstate jurisdiction. GTOC's showing, however, is based on a study in which it increased -- apparently arbitrarily -- the interstate switched usage at each potential PSA serving office by five percent and calculated the per-minute increment to the interstate revenue requirement. *See* GTOC Reply Comments at 17-18 & App. 1. The basis of this study is at best unclear and in the absence of more reliable data, we are not persuaded that GTOC has shown that PSA would recover the additional costs allocated to the interstate jurisdiction. In addition, the figures contained in Appendix 1 to GTOC's Reply Comments, which show average revenue per MOU in the first year to be0.012074, are inconsistent with figures contained in GTOC's D&J, which indicate that average first year revenue per MOU would be0.00669. This would be less than the "Total PSA Costs Per Minute (Separations Basis)" of0.008146 stated in Appendix 1 to GTOC's Reply Comments.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY

Comparably Efficient
Interconnection Plan for Codec
Conversion Service

MEMORANDUM OPINION AND ORDER

Adopted: July 15, 1988; Released: July 29, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On December 18, 1988, the American Telephone and Telegraph Company (AT&T) filed a Comparably Efficient Interconnection (CEI) Plan (the Plan) for the provision of Codec Conversion Service (CCS). CCS is an enhanced service that provides protocol conversion to facilitate communications between different types of picture processing equipment used in video teleconferencing services. We requested public comment on the Plan. Three parties filed comments, and two parties filed reply comments.[1] In this order, pursuant to the authority delegated to us by the Commission, we approve the Plan, subject to the conditions discussed below.

II. BACKGROUND

2. The *Computer III* orders[2] permit AT&T to offer a specific enhanced service, or class of services, on an unseparated basis only after our approval of a CEI plan. Under the Commission's CEI requirement, carriers must provide interconnection opportunities to others on the basis of an "equal access" standard to insure that basic facilities are available to other enhanced service providers and users on a functionally equal basis. [3] A CEI plan must also satisfy other nonstructural safeguards governing the use of customer proprietary network information (CPNI), disclosure of network information, and nondiscrimination reporting.[4]

III. SERVICE DESCRIPTION

3. AT&T describes CCS as a service that will perform protocol conversion to permit customers to use AT&T's ACCUNET Reserved 1.5 Service (ACCUNET Reserved Service) for video teleconferencing applications when the picture processor equipment (a "coder-decoder" or codec) located at the originating customer location uses protocols that are incompatible with those utilized by the codec at the terminating customer location. AT&T states that in a video conference call, a codec at the originating customer location transforms broadband analog video and voice signals into digital signals by means of an algorithm, or protocol, unique to that codec. According to AT&T, the digital signals transmitted in the originating codec's protocol over ACCUNET Reserved Service can be received at the terminating end only if the terminating codec either (1) uses or "comprehends" the same protocol as the originating codec; or (2) receives a digital signal that has been converted into the specific protocol used by the terminating codec. In the former case, no protocol conversion is necessary to complete the video conference call. However, in the latter case, the video conferencing call will not be completed without protocol conversion, which AT&T will perform through codecs located at its central office.[5]

4. AT&T states that protocol conversion is the only enhanced function that CCS will perform. According to AT&T, CCS will perform protocol processing by using two codecs and a Time Base Corrector located in its central office.[6] AT&T states that personnel at its 1.5 reservation center for ACCUNET Reserved Service will activate its CCS protocol conversion capability upon notification by a customer that a video conference call will require protocol processing between specific locations for a specified period of time.[7]

IV. COMPLIANCE ISSUES

A. CEI Requirements

5. The *Phase I Reconsideration Order* affirmed that the standard for evaluating CEI compliance is based on "equal access," which will be interpreted in a "reasonable and efficiency-promoting manner."[8] The standard does not require absolute technical equality, but rather seeks to achieve fairness and efficiency for all enhanced service providers competing with a carrier. Factors used to evaluate whether the standard has been met include the absence of systematic differences between basic service access provided to the carrier's enhanced service operations and to others, end-user perception of equality, and utility to other enhanced service providers – that is, whether any technical disparity makes a difference in the ability of competitors to provide their enhanced services.[9]

1. The Proposed CEI Arrangements

6. AT&T states that it will fulfill its CEI obligation for CCS by offering ACCUNET Reserved Service, a regulated basic service, under tariff. AT&T states that CCS will take ACCUNET Reserved Service at the standard tariffed rates. AT&T says that local access to this service can be provided by (1) AT&T under AT&T's Tariff F.C.C. No. 11, (2) direct purchase by the customer from the local exchange carrier, or (3) the customer itself.[10]

2. CEI Parameters

7. The *Phase I Order* lists nine CEI parameters that are designed to ensure that the basic services used by a carrier's enhanced service are available to other enhanced service providers in an equally efficient manner.[11] The Commission took care to develop the parameters so that the carriers subject to those requirements could satisfy them in a flexible manner, consonant with the particular services at issue. The *Phase II Order* provided specific CEI requirements for protocol processing that are applications of the general principles of the *Phase I Order*. The guiding principle behind the requirements is that carriers must

provide efficient nondiscriminatory access to the basic service facilities necessary to support their competitor's enhanced services, which include protocol processing.[12]

a. Positions of the Parties

8. AT&T states that it has complied with the Commission's CEI requirements applicable to services that perform only protocol conversion functions. AT&T quotes the following language of the *Phase II Order* :

> [W]e . . . require AT&T to provide to others, on a nondiscriminatory basis, the digital transmission services and facilities that underlie its enhanced services that use protocol processing. We require AT&T to take such services and facilities that it uses for its own enhanced services at the standard tariffed rates it charges to others.[13]

9. According to AT&T, it has satisfied the Commission's CEI requirements because the underlying "digital transmission service" -- ACCUNET Reserved Service -- is a regulated basic service provided under tariff that CCS will take at standard tariffed rates.[14]

10. ADAPSO claims that AT&T has not fulfilled its CEI obligations, and requests rejection of the Plan on the basis that AT&T fails to comply with the full panoply of CEI requirements prescribed in the *Phase I Order*.[15] ADAPSO argues that AT&T has taken a "scrivener's" view of CEI by asserting that it need not comply with these requirements since CCS only involves protocol processing.[16] ADAPSO asserts that such a narrow view of the Commission's CEI requirements is wholly unwarranted, since the language in the Commission's *Phase II Order* upon which AT&T relies applies only to protocol processing that is performed in conjunction with packet switching services, or, as the *Phase II Order* says, "to protocol processing/packet switching offerings."[17] ADAPSO states that the Commission's order is devoid of any discussion, much less analysis, suggesting that protocol processing services not provided in conjunction with packet switching services, such as CCS, are exempt from the full range of CEI requirements, since no parties to that proceeding address protocol processing other than in the packet switching context.[18]

11. In addition, ADAPSO asserts that none of the considerations that led the Commission to modify its CEI requirements for protocol processing performed in conjunction with packet switching services applies to private line-based services such as CCS. According to ADAPSO, the Commission exempted protocol processing services from CEI requirements applicable to other services on the basis of concerns that "the implementation of CEI for protocol processing will require a costly and inefficient process of unbundling or 'splitting' the [packet assembler-disassembler (PAD)] from the basic packet network to provide access to the proprietary network protocol."[19] ADAPSO supports its position by referring to the Commission's statement that "under the approach we adopt today, the carrier will not be required to incur any costs related to the severing of its PAD/network interface to provide CEI/ONA for protocol processing services."[20]

12. ADAPSO claims that because CCS is a protocol processing service associated with a private line offering (rather than a packet switching service), CCS should be subject to all CEI requirements established by the Commission in *Computer III*.[21] ADAPSO notes that the private line circuits on which CCS depends are dedicated channels that require none of the PADs, switches, or other equipment that are integral to the "protocol processing/packet switching" services that led the Commission to modify its CEI rules.

13. ADAPSO further contends that given AT&T's market power in the provision of interexchange basic services, like terrestrial private lines, that are important to the offerings of enhanced service competitors, any weakening of the Commission's CEI requirements would undermine the integrity of the nonstructural safeguards adopted in *Computer III*, contrary to the public interest.[22] ADAPSO argues that the Commission's adoption of AT&T's restricted interpretation of its CEI obligations would erode an essential regulatory safeguard for the wide variety of services that can be described as "protocol processing". In ADAPSO's view, while CCS may be a relatively inconsequential enhanced service offering, approval of AT&T's CEI Plan would effectively permit AT&T to circumvent the Commission's CEI requirements and provide AT&T an incentive to obscure the capabilities of its enhanced service offerings by characterizing a wide variety of such offerings as "protocol processing" to avoid regulatory scrutiny.[23] In contrast, according to ADAPSO, requiring AT&T to satisfy the CEI equal access parameters prescribed by the Commission will not unduly burden AT&T.

14. In its reply, GTE Spacenet states that it shares ADAPSO's concern that Commission approval of an AT&T plan that does not even purport to comply with the Commission's CEI requirements would effectively weaken those requirements and would establish a precedent for approval of additional plans that do not meet the CEI requirements.[24] GTE Spacenet states that such weakening would undermine the integrity of the nonstructural safeguards adopted in *Computer III*.

15. In contrast to ADAPSO's objections, ITCA supports AT&T's proposal, which it states would advance the growth of the teleconferencing industry because it will enable disparate codec models to communicate with each other.[25] According to ITCA, allowing AT&T to implement CCS in conjunction with its basic network services will further the goals of *Computer III* by increasing the efficiency of AT&T's basic network and permitting AT&T to provide a key component of the "systems-type" solution that many video-teleconferencing users and potential users are seeking. However, ITCA states that it has not conducted an independent appraisal of the technical showings contained in AT&T's proposal as required as part of the CEI process. It cautions that it does not in any way intend to suggest that the Commission should overlook any material technical or competitive concerns that might arise from its review of the Plan.

16. AT&T replies to ADAPSO's arguments by reiterating in complying with the specific CEI requirements of the *Phase II Order*, it will provide to others on a nondiscriminatory basis the digital transmission services and facilities that underlie CCS and that it will take these services and facilities at the same standard tariffed rates it charges to others.[26]

17. AT&T opposes ADAPSO's contention that the specific CEI requirements for protocol processing apply only to AT&T's protocol conversion offerings performed in conjunction with basic packet switching services. AT&T claims that the Commission has repeatedly stated that the CEI requirements for protocol processing apply to all

AT&T protocol processing services, not just to those that are offered in conjunction with basic packet switching services.[27] AT&T further claims that in promulgating the specific CEI requirements applicable to protocol processing, the Commission stated that its use of the term "protocol processing" is intended to encompass all the types of services contained in the first substantive clause of the current enhanced services definition that applies to services offered over common carrier transmission facilities regardless of the transmission technology employed on those facilities.[28]

18. AT&T contends that the Commission found that applying all of the CEI requirements to protocol processing would be both infeasible and unnecessary.[29] AT&T notes that the Commission expressly explained that it was infeasible to "split" the PAD equipment from an associated basic packet switching service whenever the PAD equipment performs protocol processing. According to AT&T, the CCS equipment will perform both basic and enhanced services, and, like the PAD, cannot be "split". Such splitting, AT&T argues, is unnecessary for regulatory purposes and would constrain the merging of existing protocol processing offerings with newer transport technologies.[30]

3. Discussion

19. Although ADAPSO argues to the contrary, throughout the *Computer III* proceeding, the Commission has never distinguished between protocol processing offered with packet services and protocol processing offered with other forms of basic services. Despite repeated opportunities in the course of articulating the policy with regard to protocol processing, the Commission has never stated that different regulatory schemes should apply for protocol processing subcategories. For example, the *Phase II Reconsideration Order* stated that "when protocol processing is offered by AT&T or a BOC, the carrier must satisfy specific CEI requirements . . . to provide efficient, nondiscriminatory, unbundled access . . . for competitors to provide enhanced services that include protocol processing."[31] That order does not mention a separate treatment for protocol processing with packet switching.

20. It is true, of course, that the Commission in its earlier *Phase II Order* discussed a "packet switching" application in clarifying CEI requirements for protocol processing. However, that discussion of packet switching was simply illustrative. In establishing the specific CEI requirements applicable to protocol processing, the Commission stated that its use of the term "protocol processing" is "intended to encompass all the types of services contained in the first substantive clause of the current enhanced services definition."[32] That clause applies to "services offered over common carrier transmission facilities" regardless of the transmission technology employed on those facilities. While the Commission referred specifically to protocol processing offered with packet switching in discussing the possible inefficiencies of "splitting" a PAD for regulatory purposes, we believe that, like the PAD in a packet service, CCS equipment, which performs both basic and enhanced functions should be able to provide such functions on an efficient integrated basis.[33] We note that no party has presented a sound technical or technological reason to justify regulatory treatment for protocol processing offered with packet switching that differs from the treatment of protocol processing offered with non-packet switching services such as private lines.

21. Finally, we note that AT&T's CEI Plan, as filed, does not permit discrimination by AT&T against competitors who wish to offer CCS. Competitors can purchase their own codecs in the competitive market, as well as the underlying basic service needed to provide CCS -- ACCUNET Reserved Service -- at the same tariffed rates AT&T charges itself. The distinction that ADAPSO attempts to make between the regulatory treatment for packet and non-packet services using protocol processing is less compelling when the purpose to which either regulation is directed -- discrimination -- is not an apparent concern. We believe that the nondiscrimination requirement, together with the other nonstructural requirements, should adequately protect enhanced service providers. We therefore conclude that AT&T properly complies with the Commission's CEI requirements for protocol processing.

B. Pricing and Costing Issues

1. Positions of the Parties

22. GTE Spacenet expresses concern that transport costs necessary to provide CCS may not entirely be borne by users of CCS, and that the Plan does not address this concern. GTE Spacenet states that despite the distance sensitivity of the underlying basic service that AT&T will use to provide its enhanced CCS offering, the Plan is devoid of any information on how this service actually incurs transport costs based on network routing over varying distances, or who will bear any increased transport costs created by the service.[34]

23. AT&T replies to the concerns of GTE Spacenet about its costing of transmission for CCS by noting that the tariff for the underlying service -- ACCUNET Reserved Service -- that competing ESPs would use to provide CCS is already effective so that no point would be served by including it in its Plan.[35]

2. Discussion

24. We do not believe that the general concerns of GTE Spacenet regarding the costing and pricing of ACCUNET Reserved Service are relevant to our consideration of the Plan. AT&T and any video-teleconferencing competitors that so choose will use ACCUNET Reserved Service on the same basis. Accordingly, any pricing or costing anomalies that might exist in ACCUNET Reserved Service apply equally to AT&T and others, and there is nothing in the record to indicate that any such anomalies, assuming they exist, would favor AT&T's CCS service.

C. Other Nonstructural Safeguards

1. Allocation of Joint and Common Costs

25. The *Joint Cost Order* adopted rules for the allocation of costs between regulated and unregulated services. The *Phase II Order* required as part of the CEI requirements that AT&T and the BOCs comply with those rules.[36]

a. Positions of the Parties

26. AT&T says that it will account for the joint and common costs of CCS pursuant to the provisions of its November 12, 1987, Part 32 cost allocation manual, filed in response to the Commission's *Joint Cost Order*, once that manual is given final approval by the Commission. AT&T

requests permission to use its Part 32 manual on an interim basis pending final approval to account for the costs of CCS.

27. GTE Spacenet claims that the Commission should not approve AT&T's CCS Plan because it contains insufficient cost allocation information.[37] GTE Spacenet states that AT&T indicates in its Plan that it will only account for the joint and common costs of CCS pursuant to its cost allocation manual filed in response to the Commission's *Joint Cost Order* once that manual is approved by the Commission. GTE Spacenet states that without a more detailed cost allocation plan, the Commission will be unable to determine whether AT&T's basic services ratepayers will bear any of the costs of AT&T's CCS offering and whether CCS will be made available in an economically efficient manner.

28. GTE Spacenet also questions whether AT&T will fully recover from users of its CCS service the cost of equipment that AT&T uses to provide CCS (the codecs and time base operators).[38] GTE Spacenet notes that AT&T has indicated that while AT&T will use equipment also used for basic service to perform certain testing and maintenance functions for CCS, AT&T has provided no information as to what testing and maintenance functions will be performed with this equipment or what portion of the equipment cost -- if any -- will be allocated to basic services rather than directly to CCS. GTE Spacenet states that it has no objection to AT&T's provision of CCS service on an unseparated basis if users of CCS fully bear the cost of the service.

29. AT&T opposes GTE Spacenet's arguments, and quotes the *Joint Cost Order* to the effect that "companies who file CEI plans should file cost allocation manuals conforming to the standards adopted herein, rather than special accounting plans designed for particular enhanced service offerings."[39] AT&T states that it has filed a cost manual in full compliance with that order.[40] AT&T reiterates that it will account for joint and common costs of CCS pursuant to its manual once the Commission approves it.

30. In its reply, GTE Spacenet repeats its earlier argument that until sufficient cost allocation information is forthcoming to satisfy the Commission that costs associated with CCS will not improperly be attributed to AT&T's basic services, AT&T should not be permitted to offer the enhanced service on an unseparated basis. GTE Spacenet argues that approval of the Plan would enable AT&T to exploit its market dominance in interexchange service markets to disadvantage its competitors in the provision of video teleconferencing services with protocol processing functions.

b. Discussion

31. As stated in the *Joint Cost Order*, cost allocation issues associated with individual CEI plans will be resolved in the context of the carrier's cost allocation manuals rather than in special accounting plans.[41] On March 29, 1988, we approved AT&T's cost allocation manual subject to a number of conditions and requirements for the submission of further information.[42] Subject to AT&T's compliance with the conditions that we adopted in our order approving AT&T's cost allocation manual, *supra*, we find that this section of the Plan complies with the *Computer III* requirements.

2. Customer Proprietary Network Information

32. The *Phase II Order* required AT&T[43] to (1) make CPNI available, upon customer request, to unaffiliated enhanced service vendors on the same terms and conditions that are available to its own enhanced services personnel; (2) limit its enhanced services personnel from accessing a customer's CPNI, if the customer so requests; and (3) notify multiline business customers annually of their CPNI rights.[44]

33. The Commission adopted several requirements in the *Phase II Reconsideration* to increase customers' ability to limit access to their CPNI.[45] First, the CPNI notice from AT&T to its multiline business customers must include a response form that customers may use to inform AT&T of their preferred CPNI treatment. Second, AT&T must honor a customer's choice to restrict release of its CPNI until the customer specifically notifies AT&T to the contrary. Third, customers may restrict access by AT&T enhanced service personnel to some or all of their CPNI for specific time periods or for specific purposes. Fourth, AT&T must honor customer requests for restricted treatment of CPNI that are sent before AT&T sends notices of CPNI rights. Fifth, AT&T must submit amendments to its ONA plans to include copies of its proposed notification of CPNI rights and response forms.

a. Positions of the Parties

34. To comply with the Commission's CPNI requirements, AT&T attaches, and incorporates by reference, the CPNI procedures that it filed on October 19, 1987, as part of its CEI plan for Transaction Services.[46] AT&T states that if a business customer requests confidential treatment of CPNI related to a discrete project, the customer may be served for that project through AT&T's Vendor Liaison Program, which restricts access to CPNI to AT&T basic service network personnel.[47] If a business customer requests that all of its CPNI be kept confidential, AT&T says that it will not generally establish a separate sales group for that customer but will instead refrain from selling CPE and enhanced services to that customer.[48] No other party comments on this aspect of the Plan.

b. Discussion

35. As we stated in the *Transaction Services Order*,[49] the *Phase II Reconsideration Order* adopted CPNI requirements that AT&T could not have anticipated at the time that it submitted the Plan. While the Plan for CCS does not reflect those requirements, AT&T has responded to them in an amendment to its Open Network Architecture (ONA) Plan.[50] AT&T's ONA Plan, including the March 10 Amendment, will receive extensive public comment and the Commission will review the CPNI provisions of the plans in a separate proceeding. We shall therefore approve this section of the Plan on an interim basis, until either (a) the date on which the Commission approves AT&T's ONA Plan, including the March 10 Amendment; or (b) in the event the Commission does not approve AT&T's ONA Plan, any deadline that the Commission sets for AT&T's compliance with the CPNI requirements. Thus, this interim approval of the Plan's CPNI provisions will automatically become permanent when, and if, the Commission finds that AT&T has complied with the CPNI rules for ONA purposes.

3. Disclosure of Network Information

36. The *Phase II Order* required AT&T to disclose information about network changes or new network services that affect the interconnection of enhanced services with the network at two points in time.[51] First, AT&T must must disclose such information at the "make/buy" point -- that is, when AT&T decides to make itself, or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface. The Commission permitted AT&T to condition "make/buy" disclosure of technical network information on the signing of a nondisclosure agreement and to provide the required network information within 30 days of the execution of such an agreement. Second, the Commission required AT&T to release publicly all technical information at least twelve months prior to the introduction of the new service or network change that affects enhanced service interconnection with the network. However, if AT&T is able to introduce the service between six and twelve months after the make/buy point, public disclosure is permitted at the make/buy point, but no less than six months before the introduction of the service. The Commission declined to modify those requirements in the *Phase II Reconsideration Order*.[52]

a. Positions of the Parties

37. AT&T states that its introduction of CCS will not require any changes to the standard interfaces to AT&T's basic network and that accordingly, there is no new or changed network information that needs to be disclosed in connection with its CEI Plan. AT&T states that if, in the future, any changes to its basic network that affect the interconnection of enhanced services reach the make/buy point, it will comply with the Commission's network information disclosure requirements.[53] No other party comments on this aspect of the Plan.

b. Discussion

38. We find that, since AT&T's offering of CCS will not involve any new network interface or services, it is not required at this time to disclose information about network changes or new network services. As discussed above, the Commission's rules require that AT&T disclose such information in the future should it make any changes in its network interfaces or services used in connection with CCS.

4. Nondiscrimination Reports

39. The *Phase II Order* required that, as part of their CEI obligations, AT&T and the BOCs file quarterly nondiscrimination reports that provide comparative data on the timing of installation and maintenance, as well as the quality and reliability, of the basic services offered as part of any CEI tariff.[54] The *Phase II Reconsideration Order* eliminated the requirement that AT&T submit reports on the quality of the basic services included in its CEI offerings, provided that it (1) amends its ONA plan to include a detailed description of its installation procedures that demonstrates its inability to engage in quality-based discrimination, and (2) submits an annual affidavit attesting that it has followed the installation procedures described in its ONA plan amendments and that it has not, in fact, discriminated in the quality of network services used by competing enhanced service providers.[55]

40. The *Phase II Reconsideration Order* also denied AT&T's request for permission to file installation and maintenance data only for its own enhanced service operations, but the Commission modified its requirements to permit AT&T to file reports comparing installation and maintenance intervals provided to its own enhanced service operations with those provided to a sampling of all customers.[56]

a. Positions of the Parties

41. Noting that it had petitioned for reconsideration of the *Phase II Order*'s nondiscrimination reporting requirements, AT&T proposed an interim procedure pending resolution of that petition. AT&T proposes to provide quarterly reports that would show only the time periods required for the installation and maintenance of the basic services underlying its own CCS service.[57] According to AT&T, these reports will be identical in substance to those now required for AT&T's externally provided enhanced services and will give any customer of AT&T basic services, including any enhanced service provider, a benchmark to compare its own intervals for AT&T-provided installation and maintenance with those for AT&T's enhanced service operations.[58] No other parties comment on this aspect of the Plan.

b. Discussion

42. As in the case of CPNI, the Commission revised its nondiscrimination reporting requirements after AT&T filed the Plan, and AT&T has responded to the revised requirements in the March 10 Amendment to its Open Network Architecture Plan. We shall therefore approve this section of the Plan under the same conditions that we apply to the CPNI section of the Plan, *i. e.*, on an interim basis, until either (a) the date on which the Commission approves AT&T's ONA Plan, including the March 10 Amendment; or (b) in the event the Commission does not approve AT&T's ONA Plan, any deadline that the Commission sets for AT&T's compliance with the nondiscrimination reporting requirements. Thus, this interim approval of the Plan's nondiscrimination reporting provisions will automatically become permanent when, and if, the Commission finds that AT&T has complied with the nondiscriminatory reporting rules for ONA purposes.

V. ORDERING CLAUSES

43. IT IS HEREBY ORDERED, that pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. § 553, and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, AT&T's CEI Plan for Codec Conversion Services IS APPROVED, subject to the conditions described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX A

PARTY FILING CEI PLAN

American Telephone and Telegraph Company (AT&T)

PARTIES FILING COMMENTS

ADAPSO

GTE Spacenet Corporation (GTE Spacenet)

International Teleconferencing Association (ITCA)

PARTIES FILING REPLY COMMENTS

AT&T

GTE Spacenet

FOOTNOTES

[1] A list of commenters appears in Appendix A. We use the abbreviations in that appendix throughout this order.

[2] Amendments of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry). *Report and Order*, 104 FCC 2d 958 (*Phase I Order*), *modified on reconsideration*, 2 FCC 2d 3035 (1987) (*Phase I Reconsideration Order*), *aff' d on further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*). *See also Report and Order*, 2 FCC Rcd 3072 (*Phase II Order*), *modified on reconsideration*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*).

[3] *Phase I Order*, 104 FCC 2d at 1036, para. 147.

[4] *Id.* at 1020, para. 115; *Phase I Reconsideration Order*, 2 FCC Rcd at 3042, para. 49-50. AT&T and the Bell Operating Companies (BOCs) also must satisfy the cost allocation requirements of the *Joint Cost Order*, which established compliance filing requirements that are separate from the CEI requirements. *See Joint Cost Order*, 2 FCC Rcd 1298 (1987), *modified on reconsideration*, 2 FCC Rcd 6283 (1987) (*Joint Cost Recon Order*), *further reconsideration pending*.

[5] Plan at 2.

[6] AT&T states that the CCS equipment will also be used to perform certain testing and maintenance functions for its ACCUNET Reserved Service. *Id.*

[7] *Id.* at 2.

[8] *Phase I Reconsideration Order*, 2 FCC Rcd at 3048, para. 92.

[9] *Id.*

[10] Plan at 3-4.

[11] *Phase I Order*, 104 FCC 2d at 1039-1043, paras. 154-166.

[12] *Phase* II Order, 2 FCC Rcd at 3080, para. 61.

[13] Plan at 3, *citing Phase II Order*, 2 FCC Rcd at 3081, para. 63.

[14] Plan at 3-4.

[15] ADAPSO Comments at 11.

[16] *Id.* at 2.

[17] *Id.* at 6-7, quoting *Phase II Order*, 2 FCC Rcd at 3080, para. 58.

[18] ADAPSO argues that its interpretation is supported by the Commission's reliance upon the *Asynchronous/X.25 Waiver Order*, which only addressed protocol processing used with packet switching, in devising modified CEI requirements for protocol conversion. According to ADAPSO, that order prescribes a form of CEI for "packet services that feature integrated asynchronous/X.25 protocol conversion capabilities." See id. at 7, quoting Petition for Waiver of Section 64.702 of the Commission's Rules, *Memorandum Opinion and Order*, 100 FCC 2d 1057 (1985).

[19] ADAPSO Comments at 7, *quoting Phase II Order*, 2 FCC Rcd at 3080, para. 60.

[20] ADAPSO Comments at 7-8, *quoting Phase II Order*, 2 FCC Rcd at 3080, para. 58.

[21] ADAPSO Comments at 9.

[22] *Id.* at 10.

[23] *Id.*

[24] GTE Spacenet Reply at 4-5.

[25] ITCA Comments at 5.

[26] AT&T Reply at 2-3.

[27] Id. at 4, *citing Phase II Order*, 2 FCC Rcd at 3078, 3080, paras. 43-44, 61 and *Phase II Reconsideration Order*, 3 FCC Rcd at 1151-2, 1154, paras. 1, 3-4, 11-12, 22, 28, 50, 52.

[28] AT&T Reply at 4, *citing Phase II Order*, 2 FCC Rcd at 3074, para. 15 n. 15.

[29] AT&T Reply at 5.

[30] Id. at 6, *citing Phase II Order*, 2 FCC Rcd at 3080, para. 58.

[31] Phase II Reconsideration Order, 3 FCC Rcd at 1151, at para. 3.

[32] *Phase II Order*, 2 FCC Rcd at 3074, para. 15 n. 15.

[33] We interpret the Commission's special CEI requirements for protocol processing to apply only when protocol processing is the sole enhanced aspect of a proposed service. If AT&T were to offer an enhanced service that combines protocol processing and other enhanced functions, the full panoply of CEI requirements would apply.

[34] GTE Spacenet Comments at 5. GTE Spacenet notes in this context that while protocol conversion will apparently be performed at an AT&T central office, the Plan contains no information regarding the number of central offices or the locations of the central offices equipped to perform the protocol processing function.

[35] *Id.* at 7.

[36] *See Phase II Order*, 2 FCC Rcd at 3082, para. 72.

[37] GTE Spacenet Comments at 2-3.

[38] *Id.* at 5-8.

[39] AT&T Reply at 7, *citing Joint Cost Order*, 2 FCC Rcd at 1328, para. 237.

[40] AT&T Reply at 7-8.

[41] The adequacy of the Commission's joint cost allocation rules are not at issue in this proceeding. *Joint Cost Order*, 2 FCC Rcd at 1328, para 239.

[42] *See* AT&T's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, DA 88-377 (released Mar. 29, 1988).

[43] That order also specified the CPNI requirements applicable to the Bell Operating Companies (BOCs).

[44] *Phase II Order*, 2 FCC Rcd at 3094-3098, paras. 152-156, 162-165, 172-174, and 176.

[45] *Phase II Reconsideration Order*, 3 FCC Rcd at 1163-1164, paras. 104-109. These requirements also applied to the BOCs.

[46] Plan at 5-6.

[47] Plan Attachment A at 4-5.

[48] AT&T states that in those few instances when it is cost effective and practical, AT&T account personnel may be bifurcated, and marketing of CPE and enhanced services may continue through a separate sales team that would not have access to the customer's CPNI. Id. at 5-6.

[49] AT&T CEI Plan for Transaction Services, *Report and Order* (released May 11, 1988) at para. 79, *applications for review pending*.

[50] Supplemental Description of AT&T's Procedures to Assure Non-Discriminatory Circuit Provisioning, filed Mar. 10, 1988 (March 10 Amendment).

[51] *Phase II Order*, 2 FCC Rcd at 3087-88, paras. 107-112. The network disclosure requirements also apply to the BOCs.

[52] *Phase II Reconsideration Order*, 3 FCC Rcd at 1165, para. 120.

[53] *See Phase II Order*, 2 FCC Rcd at 3086-3088 and 3092-3093, paras. 102, 107-112, and 135-139.

[54] *Id.* at 3082, para. 73.

[55] *Phase II Reconsideration Order*, 3 FCC Rcd at 1159-1160, paras. 66-71.

[56] *Id.* at 1161, paras. 80-82.

[57] Plan at 9-10.

[58] AT&T states that it has submitted these procedures in lieu of the requirements for nondiscrimination reporting of the *Phase II Order*, 2 FCC Rcd at 3087-3088 and 3092-3093, paras. 107-112 and 135-139, that would have required AT&T, as part of its CEI Plan, to submit quarterly reports comparing (i) the quality and reliability, and (ii) the timing of installation and maintenance of basic services provided under CEI tariffs to itself and to unaffiliated enhanced service providers. AT&T states that the *Phase II Order* reporting requirements are impractible and in all events unnecessary to prevent improper discrimination.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Applications for authority to construct and operate an Automated Maritime Telecommunications System using the Group C channels (216.5125 to 216.9875 MHz) along the Lower Mississippi River and the Gulf Intracoastal Waterway filed by Riverphone, Inc. T/A Maritel — PR File No. 854213

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 1988; Released: August 2, 1988

By the Commission:

1. We have before us for consideration: (1) the above-captioned applications for authority to construct and operate an Automated Maritime Telecommunications System (AMTS) using the Group C channels along the Lower Mississippi River and the Gulf Intracoastal Waterway (GIWW), filed by Riverphone, Inc. t/a Maritel (Maritel) on December 31, 1986; (2) a petition for waiver of 47 CFR § 80.215 (h)(5) concerning its proposed use of the Group C channels filed by Maritel on December 31, 1986, in conjunction with its applications; (3) timely filed (pursuant to *Order*, 2 FCC Rcd 1566 (1987), extending the time to file until April 1, 1987) petitions to deny the applications and/or oppositions to the petition for waiver filed by WLOX Television, Inc. (WLOX); Buford Television, Inc. of Panama City (Buford); KTRK, Inc. (KTRK); the Association of Maximum Service Telecasters (MST); K-SIX Television, Inc. (K-SIX); KLFY-TV; KTVE, Inc. (KTVE); Quincy Broadcasting Company (Quincy); A. H. Belo Corporation, Cosmos Broadcasting Corporation, Guy Gannett Publishing Co. and Multimedia, Inc. (Joint Parties); Knight-Ridder Broadcasting, Inc. (Knight-Ridder); and Waterway Communications System, Inc. (Watercom) and (4) various responsive pleadings from the above parties.

BACKGROUND

2. As a result of a U.S. proposal, the 1979 World Administrative Radio Conference allocated the 216-220 MHz band to the maritime mobile service in Region 2. Then the Commission allocated this band for use on the Mississippi River System by AMTSs. *See , Inland Waterways Communications System*, 84 FCC 2d 875, *recon.*, 88 FCC 2d 678 (1981), *aff' d sub nom. WJG Tel. Co., Inc. v. F. C. C.*, 675 F.2d 386 (D.C. Cir. 1982). Subsequently the Commission expanded the authorized service area of the AMTS to the GIWW, 51 RR 2d 440 (1982), and the Gulf of Mexico, 56 RR 2d 1613 (1984). The Commission established the AMTS to provide automated, integrated, interconnected communications as a solution to complaints from tug and barge operators that existing ship-to-shore service from individual public coast stations was not adequate. The AMTS could be described as a "ribbon" cellular phone system, which includes non voice services as well, for tugs and barges to use as they move along an entire river system.

3. Rules that are pertinent to the AMTS and Maritel's application are found at 47 C.F.R. §§ 80.475 - 80.479, 80.385 and 80.215(h). The scope of service rule, Section 80.475, illustrates the system concept in the AMTS. An applicant cannot get a license on AMTS frequencies for just one station; the proposed system must provide continuity of service along more than 60% of a navigable waterway within the authorized service area of the AMTS.

4. The AMTS band is adjacent to TV channel 13, which is at 210-216 MHz, and the Commission has been concerned about the potential for interference to reception of television, particularly channel 13 and also channel 10. Therefore it adopted provisions to minimize this possiblity. Section 80.215(h) conditions the operation of AMTS coast stations on the requirement that "no harmful interference will be caused to television reception." There are 80 channels in the AMTS, divided into four groups of 20 -- Groups A, B, C and D, pursuant to 47 CFR § 80.385. Pursuant to Sections 80.475(b)(1) and 80.215(h)(2) - (4), applicants proposing to locate a coast station within 105 miles of a TV channel 13 station (on Group A or B frequencies) or 80 miles of a TV channel 10 station must submit an engineering study showing the means of avoiding interference within the Grade B contour of the TV station. There must be fewer than 100 residences within the interference contour of the coast station or the applicant must show that the proposed site is the only suitable location and submit a plan to control interference, including adjusting individual TV receivers if necessary. Additionally, Group C and D frequencies cannot be used for coast stations within 105 miles of a TV channel 13 station, pursuant to Sections 80.215(h)(5) and 80.385(a)(2), as they are closer to TV channel 13 than are the Group A and B frequencies.

5. There is presently only one AMTS system, licensed to Watercom, serving the Mississippi River System and the GIWW. Watercom was initially granted authority to construct and operate an AMTS on the Group A frequencies on August 11, 1982, and its authorization was modified to include the Group B frequencies on April 5, 1984. It built its system and put it on the air in segments in 1986 and 1987. Maritel and Watercom have opposed each other in filings before the Commission for several years, although Maritel has never filed competing applications against Watercom's applications.

DISCUSSION

6. Maritel has filed applications for an AMTS using Group C channels to serve the Lower Mississippi and the GIWW. Of the 30 stations in its proposed system, 23 are within 105 miles of channel 13 TV stations in contravention of Section 80.215(h)(5). It accompanied the applications with a petition for waiver of that rule, pursuant to Section 1.3 of the Rules, which provides that the Commission may waive any provision of the Rules "for good cause shown" and Section 1.958(a)(6) of the Rules, which provides " . . . Requests for waiver must state the nature of the waiver or exception desired and set forth reasons in

support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules."

7. Maritel argues:

> a. In other services there are non-TV operations next to several other channels with no adverse consequences and in most cases the Commission has not made rules pertaining to protection of TV reception on the adjacent channels. There was nothing in the *Report and Order* that established the AMTS to justify the difference in treatment of Group B and Group C frequencies. There is no reason to believe that the difference in levels of interference potentially caused by Group C and B frequencies always justifies prohibiting stations using Group C within 105 miles of a channel 13 station or that measures that might be taken to control interference would be less effective on Group C frequencies.
>
> b. It has designed its system so that each short spaced station would cause no more interference than would a station on a Group channel at the same site. Basically it achieved this result by using lower power resulting in a smaller service area at each station than would be the case if Group B frequencies were used. Of its 30 stations only 11 would affect more than 100 residences. It has a plan to resolve any actual interference problems.
>
> c. Since Watercom has all the Group A and B channels, only Groups C and D remain; yet these are unavailable without a waiver because the number of channel 13 TV stations along the Lower Mississippi and GIWW precludes any potential applicant from providing the 60% coverage required by Section 80.385. A waiver will assure the existence of competition. It is axiomatic that good cause exists to waive a rule if it would promote competition.
>
> d. The unavailability of the A and B channels and the inability to provide 60% coverage with the C and D channels leaves Maritel without any reasonable alternative within the existing rules.

8. Essentially, Maritel's request is that its applications should be treated as though they were for Group A or B channels. Maritel argues that a rule waiver is appropriate because it has shown that the rationale for the rule would be inapplicable to its proposal and the general rule would not be abrogated. It says that the Commission made the rule to prevent harmful interference to channel 13 TV reception, that its plan would not cause such interference, and therefore a waiver is warranted because the rationale of the rule does not apply to its situation. It argues that its proposal is different from what was carefully considered in the rule making proceeding that established the AMTS and the Commission, therefore, must accommodate such novel proposals raised by applicants at a later date by waiving its rules. Maritel cites *Industrial Broadcasting Co. v. F. C. C.*, 437 F.2d 680, 683 (D.C. Cir. 1970) as supporting this position. It further states that granting its request would not compromise the Commission's ability to restrict future proposals for systems that do not provide adequate protection for TV reception.

9. Maritel claims that it is not seeking to repeal Section 80.215(h)(5), arguing that its proposed system will not cause the level of interference that the rule was intended to prevent. Maritel is, however, clearly asking that the Commission ignore Section 80.215(h)(5) and treat its applications according to Sections 80.215(h)(2) - (4), as if it were applying for stations on Group A or B channels.

10. Opposing Maritel's request are Watercom and several television interests including some channel 13 and 10 TV stations that believe they would be affected by Maritel's proposed coast stations within their service areas. They allege the following:

> a. This is not an appropriate case for waiver; Maritel's requested relief is so broad that it goes to the basis of the rule and can only be addressed in rule making.
>
> b. Even if considered as a waiver, Maritel has not shown good cause for a waiver:
>
> -- It has not met the requirements of Section 80.215(h)(2) - (4) which would apply to a system using Group B frequencies. Maritel underestimated the amount of interference to be predicted around its stations because of erroneous calculations of the interference contours and undercounting residences within the interference contours. It has failed to show that proposed sites are the only suitable locations.
>
> -- Its claim that its system would cause no more interference than a system using Group B channels is questionable. Since it reduced the interference contour of its stations by using lower power than if the Group B channels were used, that means that more stations will be needed, resulting in a higher total of interference than with a system on Group B channels. This is borne out by the fact that the average distance between its stations is less than that between the stations of Watercom, on Group A and B frequencies.
>
> -- Its attempt to claim equivalent protection for its short spaced stations should properly have been made by comparing the interference to be expected from a fully spaced station on a Group C channel rather than that to be expected from a Group B station.
>
> -- Its plan to remedy actual interference which may arise is faulty and far too costly to be practical.
>
> -- As to its claim that it has no reasonable alternative, this arose from Maritel's own inaction; it failed to object when Watercom applied for the Group B frequencies or to file a competing application.
>
> c. Maritel lacks character qualifications.

DECISION

11. Maritel's waiver request is not based on some special circumstance that warrants a departure from the general standard. Rather, it requests that its applications for Group C frequencies be treated according to the rule for Group A and B frequencies and argues that there is no basis for treating Group C frequencies differently from Group B frequencies. The rule, however, *does* treat them differently. Group C frequencies cannot be used within

105 miles of a channel 13 TV station. Group A and B frequencies can, if accompanied by a technical showing concerning interference.

12. While waivers are a necessary safety valve for rules of general applicability and an agency need give meaningful consideration to waiver requests, it also must not eviscerate a rule by waiver. *WITN - TV v. F. C. C.*, No. 87-1390 (D.C. Cir. June 28, 1988); *WAIT Radio v. F. C. C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). The function of a waiver is not to change the general standard, a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act, but to justify an *ad hoc* exception to that standard in a particular case. *Storer Broadcasting Co.*, 14 RR 742, 746-7 (1956); *VHF Drop - In Proceeding*, 90 FCC 2d 160, 166 (1982), *aff' d sub nom. Springfield Television of Utah, Inc.* v. F.C.C., 710 (F.2d 620 (10th Cir. 1983).

13. Additionally, in arguing that its proposal is novel, and thus a waiver is appropriate, Maritel misconstrues Industrial Broadcasting. It is true that the court said that the agency must maintain flexibility by taking a "hard look" at novel proposals filed at a later date. However, the court's message was, "[A] heavy burden traditionally has been placed upon one seeking a waiver to demonstrate that his arguments are substantially different from those which have been carefully considered at the Rule Making proceeding . . . . In this manner, one of the foremost advantages of Rule Making -- the formulation and effectuation of agency policy with a minimum expenditure of time and resources -- will not be undermined by the necessity for continuous case-by-case adjudication." Industrial Broadcasting, supra, at 683; See WITN-TV v. F.C.C., supra.

14. Here Maritel's request attacks the basis for the rule, which determined that mileage separation standards, rather than ad hoc showings of technical interference, would govern the use of Group C frequencies. It thus raises a question of general applicability, it can properly be addressed only in rule making. Therefore we will not grant the requested waiver and consequently will dismiss Maritel's applications as defective, pursuant to Section 1.958(c) of the Rules. However, with the passage of time and the experience of Watercom's AMTS operation, it is appropriate to revisit the question of limitations on the use of Group C and D frequencies. Thus we have issued a Notice of Proposed Rule Making concerning these and other related questions. Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), 3 FCC Rcd (1988).

CONCLUSION

15. Accordingly, IT IS ORDERED, That the petition for waiver of Section 80.215(h)(5) of the Rules filed by Maritel IS DENIED.

16. IT IS FURTHER ORDERED, That the above-captioned applications filed by Maritel ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-356

In the Matter of

Amendment of Section 73.202(b), RM-6324
Table of Allotments,
FM Broadcast Stations.
(Dahlonega, Georgia and
Murphy, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1988; Released: August 3, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Andrews Broadcasting Company (petitioner), which seeks to allot Channel 282A to Dahlonega, Georgia, as that community's first FM allotment. In order to permit the use of Channel 282A at Dahlonega, petitioner requests that Channel 274A be substituted for Channel 282A at Murphy, North Carolina. Channel 282A was allotted to Murphy in MM Docket 84-231 and made available for applications in Window No. 48, which opened January 11, 1988, and closed February 17, 1988. One application (880226MJ) was filed for Channel 292A at Murphy, by Cherokee Broadcasting Co., Inc.

2. A staff engineering analysis reveals that Channel 282A can be allotted to Dahlonega, Georgia in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, with a site restriction of 8 kilometers (5 miles) northwest of the city to avoid short spacing to Station WBBQ-FM, Channel 282C, Augusta, Georgia. Channel 274A can be used at the site proposed by the Murphy applicant for Channel 282A.[1]

3. In view of the expressed need for FM service at Dahlonega, Georgia, we shall propose to allot Channel 282A to that community, and substitute Channel 274A for Channel 282A at Murphy, North Carolina. In accordance with Commission policy, the applicant for Channel 282A at Murphy may retain its application filing protection when it amends to specify Channel 274A, since the class of channels are equivalent. *See Salamanca New York and Bradford, Pennsylvania*, 50 FR 26208 (1985). In the event a permit is issued for Channel 282A at Murphy prior to the finalization of this proceeding, Commission policy requires that the ultimate permittee for Channel 282A at Dahlonega, Georgia, reimburse the permittee for costs incurred in changing its frequency to Channel 274A.

4. Comments are invited on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to the following communities:

	Channel No.	
City	Present	Proposed
Dahlonega, Georgia	---	282A
Murphy, North Carolina	282A	274A

5. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 282A at Murphy, North Carolina, as follows:

Lauren A. Colby
Post Office Box 113
Frederick, Maryland 21701
(Counsel for Cherokee Broadcasting Co., Inc.)

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **September 23, 1988,** and reply comments on or before **October 11, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dan J. Alpert
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(Attorney for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for Channel 282A at Dahlonega at the restricted site are 34-35-06 and 84-02-37, and for Channel 274A at Murphy at the applicant's present site for Channel 282A, at coordinates 35-07-12 and 84-02-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-366

In the Matter of

Amendment of Section 73.202(b), RM-6260
Table of Allotments,
FM Broadcast Stations.
(Jupiter, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1988; Released: August 3, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making filed by Dennis L. Johnson (petitioner), which seeks to allot Channel 288A to Jupiter, Florida, as its second FM service. Petitioner stated that he will apply for use of Channel 288A, if allotted.

2. A staff engineering study indicates that Channel 288A can be allotted to Jupiter in compliance with the minimum distance separation requirements, using city coordinates (26-56-30 and 80-05-36) for the proposed transmitter site.[1] However, the proposal for Channel 288A at Jupiter is short spaced to Station WAVW(FM) Channel 288A, Vero Beach, Florida,[2] and thus contingent on Station WAVW(FM) moving to Channel 279C2 in accordance with the provisions outlined in the *Report and Order* in MM Docket 86-284, 3 FCC Rcd. 1049 (1988).

3. Accordingly, in order to provide Jupiter with its second FM channel, comments are invited on the proposal to amend the FM Table of Allotments, (Section 73.202(b) of the Commission's Rules) with regard to the following community:

	Channel No.	
City	Present	Proposed
Jupiter, Florida	296A	296A,[3] 288A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 23, 1988,** and reply comments on or before **October 11, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Daniel F. Van Horn
Arent, Fox, Kintner, Plotkin,
and Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should

also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 288A at Jupiter are 26-56-30 and 80-05-36.

[2] Jupiter and Vero Beach are only 73.3 kilometers apart, whereas, 105 kilometers are required between co-channel allotments.

[3] In a separate proceeding, Docket 87-233 (RM-5841), Channel 258A is proposed as a substitute for Channel 296A at Jupiter.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-397

In the Matter of

Amendment of Section 73.202(b), RM-5961
Table of Allctments,
FM Broadcast Stations.
(George West, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 3, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 52 FR 37991, October 13, 1987, issued at the request of Larry S. Tschirhart (petitioner), proposing the allocation of Channel 281A to George West, Texas, as that community's first local FM service. Petitioner filed supporting comments restating his intention to apply for the allocation.

2. The channel allotment can be made to George West in compliance with the Commission's minimum distance separation requirements.[1] Since the community is located within 320 kilometers (199 miles) of the U.S.- Mexican border, concurrence has been obtained from the Mexican government.

3. We believe the public interest would be served by allocating Channel 281A to George West, Texas, as a first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 16, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
George West, Texas	281A

4. The window period for filing applications will open on **September 19, 1988,** and close on **October 19, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are 28-20-06 and 98-06-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-329

In the Matter of

Amendment of Section 73.202(b), RM-5699
Table of Allotments,
FM Broadcast Stations.
(Wickenburg, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 6, 1988; Released: August 3, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 5206 (1987), issued in response to a petition filed by Consolidated Communications Network, Inc., licensee[1] of Station KCIW-FM,[2] Channel 288A, Wickenburg, Arizona, proposing the substitution of Channel 287C2 for Channel 288A and modification of its facilities accordingly. Petitioner filed comments in support of the proposal. No other comments were received.

2. We believe the public interest would benefit by substituting Channel 287C2 for Channel 288A at Wickenburg, Arizona, since it could provide the community with its first expanded coverage area broadcast station. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the license of Station KCIW-FM to specify operation on Channel 287C2 in lieu of Channel 288A, as requested. As indicated in the *Notice*, a staff engineering analysis has determined that Channel 287C2 can be allotted to Wickenburg in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is located at least 11.3 kilometers northwest [3] of the community to avoid short-spacing to Station KZZP(FM), Channel 284C, Mesa, Arizona.[4] Additionally, since Wickenburg is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence in the proposal by the Mexican government was obtained.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 16, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Wickenburg, Arizona	287C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Consolidated Communications Network, Inc. for Station KCIW-FM, IS MODIFIED, effective **September 16, 1988,** to specify operation on Channel 287C2 in lieu of Channel 288A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although an application (BALH-880303EF) for the voluntary assignment of license BLH-861215KA from the petitioner to Kenyon Communications, Inc. was granted April 18, 1988, we are advised that consummation is contingent upon the successful outcome of this proceeding.

[2] Formerly Station KUUK(FM).

[3] Reference coordinates at the restricted site are 34-02-49 and 112-48-21.

[4] Reference coordinates at the licensed site of Station KZZP-FM are 33-20-04 and 112-03-35.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-216

In re Applications of

MARLIN BROADCASTING OF CENTRAL FLORIDA, INC.	File No. BPCT-850319KF
Mary L. Demetree, Barbara C. Roper, *et al.* d/b/a ORLANDO TELEVISION PARTNERS	File No. BPCT-850320KK
SUNSHINE TELEVISION 27, INC.	File No. BPCT-850320KN
REECE ASSOCIATES, LIMITED	File No. BPCT-850320KR
MAGIC CITY BROADCASTING, INC.	File No. BPCT-850320KU
ORLANDO 27, INC.	File No. BPCT-850320KX
HIGHLAND COMMUNICATIONS, LTD.	File No. BPCT-850320LA
CENTRAL FLORIDA TELEVISION, LTD.	File No. BPCT-850320LD
FLORIDA TELEVISION COMPANY	File No. BPCT-850320LM

For Construction Permit
for a New Television Station
Orlando, Florida

Appearances

Martin E. Firestone and *William Leith* on behalf of Marlin Broadcasting of Central Florida, Inc.; *Gerard J. Duffy* on behalf of Orlando Television Partners; *Robert F. Aldrich* and *Robert Lewis Thompson* on behalf of Sunshine Television 27, Inc.; *Michael H. Rosenbloom* and *Leslie Smackhamer* on behalf of Reece Associates, Ltd.; *Paul A. Zevnik* and *Diane L. Hofbauer* on behalf of Magic City Broadcasting, Inc.; *Christopher D. Imlay* and *Cary S. Tepper* on behalf of Orlando 27, Inc.; *Lewis I. Cohen* on behalf of Highland Communications, Ltd.; *William H. Crispin, Michael J. Wilhelm* and *William E. Kennard* on behalf of Central Florida Television, Ltd.; *Roy F. Perkins, Jr.* and *Saskia A. Arthur* on behalf of Florida Television Company; and *Norman Goldstein* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
JOHN M. FRYSIAK

Issued: July 22, 1988; Released: August 5, 1988

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of Marlin Broadcasting of Central Florida, Inc. (Marlin), Mary L. Demetree, Barbara C. Roper, *et al.* d/b/a Orlando Television Partners (OTP), Sunshine Television 27, Inc. (Sunshine), Reece Associates, Limited (Reece Associates), Magic City Broadcasting, Inc. (Magic City), Orlando 27, Inc. (Orlando 27), Highland Communications, Ltd. (Highland), Central Florida Television, Ltd. (Central Florida) and Florida Television Company (Florida Television), for authority to construct a new UHF television station to operate on Channel 27 at Orlando Florida.[1]

2. The *Hearing Designation Order*, 50 F.R. 31030 (1985) (HDO) specified the following issues with respect to the nine applicants which remain parties to the proceeding:

> (1) To determine, with respect to each of the applicants, whether the tower height and location proposed by each would constitute a hazard to air navigation.[2]
>
> (2) To determine, with respect to Orlando Television Partners, whether its application is consistent with the Commission's cross- interests policy and, if not, whether grant of the application would be consistent with the public interest.[3]
>
> (3) To determine, with respect to Orlando 27, Inc., whether its application is consistent with the Commission's cross-interests policy and, if not, whether grant of the application would be consistent with the public interest.
>
> (4) To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> (5) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

3. By *Memorandum Opinion and Order*, FCC 85M-4116, released October 22, 1985, the following issue was specified with respect to Reece Associates:

> To determine, on a comparative basis, whether the needs of the Black population residing within the Orlando, Florida, service area of the proposed station are being met by television programming services currently available, and, if not, whether Reece Associates Limited should be awarded a comparative preference because of the programming specifically intended to meet the needs of Blacks it has proposed.

4. By *Memorandum Opinion & Order*, FCC 86M-1787, released May 28, 1986, the following issues were specified with respect to Marlin:

To determine whether Marlin is financially qualified to be a Commission licensee.

To determine whether Marlin either misrepresented facts, was lacking in candor or was grossly negligent in certifying that it was financially qualified and, if so, the effect thereof on its basic qualifications to be a Commission licensee.

5. By *Memorandum Opinion and Order*, FCC 87M-539, released March 16, 1987, the following issues were specified with respect to Sunshine:

To determine whether Sunshine engaged in misrepresentation of the facts, exhibited a lack of candor to the Commission, or was grossly negligent in certifying that it was financially qualified to construct and operate its proposed station, and if so, the effect thereof on its basic qualification to be a Commission licensee.

To determine whether Sunshine is financially qualified to construct and operate its proposed station as a Commission licensee.

6. Pre-hearing conferences were held on September 17, 1985 and February 7, 1986. Hearing sessions were held on June 16 - July 2, 1986, on October 15, 1986, on October 20 - 24, 1986, on January 5 16, 1987 and on June 2 and 8, 1987.

FINDINGS OF FACT
BASIC QUALIFYING ISSUES
FINANCIAL QUALIFICATION AND FINANCIAL CERTIFICATION ISSUES -- MARLIN

7. Marlin is a corporation formed under the laws of the State of Florida (Marlin Ex. 1). Its Articles of Incorporation were filed on March 22, 1985 (Tr. 220). Marlin has only one class of stock which is common voting stock, and has issued a total of 700 shares (Marlin Ex. 1; Highland Ex. 8). Marlin's shareholders, officers, and directors are (Marlin Ex. 1):

Name	Positions	Amount of Name Ownership
Dr. Carol Surles	President, Director	100 shares
Carolyn Fennell	Vice President, Director	100 shares
Dr. Jean Raffa	Secretary, Director	100 shares
Paula Stuart	Treasurer, Director, Vice President for Finance	100 shares
Paulette Clark	Director	100 shares
M. Jean Butler	Director	100 shares
Elisabeth Stuart	Director	100 shares

8. In its application filed March 19, 1985, and signed by Dr. Carol Surles as President, Marlin represented that it was financially qualified to construct and operate its proposed station by certifying that it had the reasonable assurance of a present firm intention for each loan by banks, financial institutions or others, that it can and will meet all contractual requirements as to collateral, guarantees and capital investment, and that it had determined that a reasonable assurance existed that all such sources have sufficient net liquid assets to meet those commitments (Marlin Exs. 9, 10).

9. Prior to the filing of the Marlin application Carol Surles, Paula Stuart and Marlin's communications counsel agreed upon an estimated budget of5 million for the construction and initial operation of the proposed UHF television station Channel 27 in Orlando Florida (Marlin Exs. 9, 10,; Tr. 6026-27, 6031,6033, 6036). This estimate was based on a review of material contained in a study prepared by Broadcast Engineering Services, Inc. for Media South of Shreveport, Louisiana, licensee of a new television station, KMSS, Channel 33 (Tr. 5941-45, 5952-53, 5963-64, 6031, 6033, 6036; Marlin Exs. 9, 10; Highland Ex. 13). No independent budget was prepared by Marlin (Tr. 6036).

10. The KMSS budget did not include costs associated with a news department (Marlin Ex. 9; Tr. 6031). However, communications counsel advised Marlin that based on his experience, a total budget of5 million would be more than sufficient to cover news department operating costs (*Id.*).

11. Except for pre-grant application prosecution costs which were estimated to be about60,000 and which were to be provided by Marlin's principals (Highland Ex. 8), the entire estimated cost of construction and initial operation was to be provided solely through outside financing (Marlin Exs. 9, 10; Highland Ex. 13).

12. Paula Stuart, Marlin's treasurer, was assigned the task to inquire into possible financing sources (Highland Ex. 13; Marlin Exs. 9, 10; Tr. 5967-69; 6041-44). Ms. Stuart had been employed in the financial and banking sector for many years (Tr. 5998; Marlin Ex. 10). In certifying that Marlin was financially qualified, Ms. Surles relied on Ms. Stuart's assurance that a financing commitment had been obtained (Marlin Ex. 9, pp. 3-4).

13. Prior to submitting Marlin's application, Ms. Surles and Ms. Stuart discussed with counsel the nature of the certification of Marlin's financial qualifications (Marlin Ex. 9, p. 3). Both Surles and Stuart understood counsel's advice to mean that Marlin was required to obtain a firm commitment from a financial institution that could be confirmed in writing, but that such commitment need not necessarily be in writing prior to submission of the application (*Id.*). Ms. Stuart did not request written loan commitments of the institutions she visited because in her opinion it was accepted practice in investment banking to consider as firm oral commitments to make loans (Marlin Ex. 9, p. 3).

14. In March of 1985, Ms. Stuart visited and held discussions with several institutions prior to informing Surles that Marlin was financially qualified, but she focused primarily upon three in order to seek specific assurance of financing: Baldwin, Rust and Dizney, Inc.; Drexel, Burham and Lambert, Inc.; and Pam American Bank (Highland Ex. 13, 3; Marlin Ex. 10; Tr. 5973-74, 5977-6003, 6044-45, 6057-58).

15. Stuart learned from Lee Rust, a principal in the investment banking firm of Baldwin, Rust and Dizney, that his firm would underwrite a financing of corporate debt of approximately5 million, and that the debt holders would require receipt of a security interest in the station's assets (Highland Ex. 13, p. 4; Tr. 6046-47). At the time Ms. Stuart had with her supporting documentation includ-

ing some or all of the KMSS study, but at the hearing she was uncertain as to whether Rust in fact reviewed the material (Tr. 5948-50).

16. Stuart learned from John Lord, President of the Pan American Bank of Orlando, that his bank would be willing to consider a5 million loan at an interest rate of 1 to 3 percent above the prevailing prime rate at the time of the loan, provided that review of each principal's financial position revealed an adequate basis for personal guarantees (Highland Ex. 13, p. 4; Marlin Ex. 10, p. 4; Tr. 6049; 5996-97).

17. Stuart understood that5 million was over Pan American Bank's lending limit (Tr. 5997-6000), but she did not feel any need for a letter arranging for participation by other banks being satisfied that arrangements would be made by Lord when the need arose (Tr. 6000).

18. Stuart learned from Ms. Kathy Dunderdale, an investment broker with Drexel, Burham and Lambert, Inc., that her firm would like to underwrite a financing of corporate debt of approximately5 million, with a security interest in the corporation's assets (Highland Ex. 13, p. 4).

19. In preparing Marlin's response to the Motion to Enlarge the Issues requesting the addition of the instant financial issues against Marlin, Surles spoke with Lord of the Pan American Bank to request a letter outlining the terms she understood Lord and Surles had agreed to (Tr. 6009; 6049-50, 6081). The letter subsequently provided by Lord and dated April 30, 1986, however, did not state the amount contemplated for the loan and also did not refer to the previous requirement for personal guarantees (Highland Ex. 12; Tr. 6052; Tr. 5996-97). Surles did not request an amended letter from Lord stating an amount for the loan because she felt the letter generally reflected the terms reported by Stuart, and because she trusted Lord (Tr. 6051-53). Stuart also believes that Lord is committed to providing funds up to5 million, even though the April 30, 1986 letter from the Pan American Bank does not specify any loan amounts (Tr. 5992, 5996).

20. After the instant financial issue against Marlin was added, Stuart and Surles solicited a letter from Rust of Baldwin, Rust and Dizney, Inc. (Marlin Ex. 9C; Tr. 5974-75, 6006). The resulting August 15, 1986, letter from Baldwin, Rust and Dizney, Inc., a firm of corporate finance and investment bankers, set out their willingness to "underwrite a debt commitment" for approximately5 million for the purpose of funding a portion of the Marlin venture, with an amortized seven year repayment at either a variable rate floating or fixed rate interest, subject to a security interest in all the station's assets, execution and delivery of "certain documents acceptable to Baldwin, Rust and Dizney, Inc. providing terms and related conditions," and review of Marlin's financial condition and debt service projections (Marlin Ex. 9C). Ms. Surles explained the language of the Rust letter as follows:

> It is a process by which there is an attempt to secure other sources of funding for the loan. In the event that those other sources are not viable or forthcoming, then the primary individual mentioned here would underwrite or be responsible for and hold a liability (Tr. 6047).

Financial Qualification and Financial Certification Issues -- Sunshine

21. Sunshine's application was filed on March 19, 1985, under the name of its predecessor in interest, Second Millenium Group. It was signed by its proposed sole voting shareholder, Ms. Michela English (Reece Associates Ex. 47; Tr. 6227). In signing the application, Ms. English certified that the applicant was financially qualified to construct and operate its proposed station for three months without revenue (Tr. 6228, 6233, 6242, 6255).

22. On March 19, 1985, when Ms. English certified the applicant financially qualified, no formal organizational documents or corporate documents existed (Central Florida Ex. 10; Reece Associates Exs. 36, 45), no proposed shareholder had signed any documents committing to the venture (Tr. 6242-46), no written budget had been prepared (Tr. 6241-42, 6302), no documents or arrangements had been made with any equipment manufacturer (Tr. 4831-32, 6244-45), no proposed shareholder had presented any documents to Ms. English evidencing either an ability or a willingness to make any monetary contribution (Tr. 6233-34, 6240, 6245-46, 6249-52), and no documents existed evidencing the ability or willingness of any bank to loan funds to the applicant (Tr. 6229).

23. On the date that she filed the application herein, Ms. English had a general idea, based upon counsel's estimate and her understanding gleaned from reading public source material, that the costs of post-grant construction and initial operation of the proposed station would run between1.5 to3 million (Tr. 4815-16, 6230, 6241-42). This estimate did not include any pre-grant prosecution, litigation, or engineering expenses (Tr. 4824, 4831-32, 6231-32). Pre-grant expenses were to be met by pro-rata shareholder contributions (Tr. 4814, 4817, 4846-48, 6233, 6246-48).

24. When Ms. English certified Sunshine's financial qualification, she believed that Sunshine would be able to obtain financing through Sun Bank in Orlando (Sunshine Ex. 10; Tr. 6229). This belief was based upon an oral report she received from communications counsel that her husband, Donald Quartel, Jr., had had a conversation with someone at Sun Bank (Tr. 6229-30; 6260).[4]

25. According to Donald Quartel, Jr. sometime before March 19, 1985, he was assigned the task of contacting a bank (Tr. 6298) and getting an assurance from the bank that the money would be available when needed (Tr. 6300).[5] He spoke by phone with Mercedes McCall, an officer at Sun Bank and a personal friend, indicating that the applicant needed to borrow betweenl.5 and3 million (Tr. 5448, 6301). At that point, Mr. Quartel did not know what other people might be in the final application but was not asked to provide the bank with any documentation (Tr. 6303; 6312-16). He did not ask for any written assurance that the loan would be available (*Id.*). His understanding based on counsel's advice was that only an oral commitment was needed (*Id.*). As a result of speaking with Ms. McCall, it was clear to Mr. Quartel that "(the applicant) had the opportunity to go back whenever (it) needed to get written documentation, and that was pretty firm" (Tr. 6305).

26. At the "B" cut-off date, May 6, 1985, Sunshine reported the addition of four new proposed non-voting shareholders and two new proposed voting shareholders (Reece Associates Exs. 47, 48). At the same time it recertified its financial qualifications to be a Commission li-

censee (Reece Associates Ex. 48; Tr. 6256), although no additional contact was made with Sun Bank, or contact with any other bank or any alternative sources of financing to seek assurance that, as restructured, it would have available the requisite financing (Tr. 6248; 6258-59). As of the "B" cut-off date, Sunshine did not possess a written commitment from any banking source assuring the availability of funds necessary to construct and operate the proposed station (Tr. 6257-61).

27. Additionally, as of the "B" cut-off date, Sunshine still did not have any formal organizational documents (Sunshine Ex. 4; Central Florida Ex. 10); nor did it have any written commitment from any proposed shareholder indicating an intent to purchase capital stock in the applicant (Tr. 6259), an ability or willingness to make *pro - rata* contributions towards pre-grant costs (Tr. 6258-59), an ability or willingness to contribute towards construction and operation costs either as loans or as capital; or a willingness to guarantee a bank loan of1.5 to3 million (Tr. 6249-52; 6256-59).

28. In September of 1985, Sunshine first circulated its Confidential Offering Memorandum (CFO) which outlined pre and post-grant costs and the stockholders' obligations to meet those costs on a *pro - rata* basis (Reece Associates Ex. 41; Tr. 6230-32, 6241-42, 6245, 6247-49). The CFO disclaimed any guarantee of the availability of bank financing (Reece Associates Ex. 41 at 16, 19). Also, in September of 1985, the proposed shareholders first executed written commitments to purchase stock (Reece Associates Exs. 37, 38, 40, 42, 43). Although the CFO and the Subscription Agreements specified the shareholder's financial obligations (Reece Associates Exs. 41 at 21, 37, 38, 40, 42, 43), the questionnaires respecting each subscriber's financial wherewithal and investment experience were not completed by the shareholders (Tr. 4924-25, 6250-52; Reece Associates Exs. 37, 38, 40, 42).

29. No attempt was made by any Sunshine principal to obtain anything in writing from a bank until July, 1986 (Reece Associates Ex. 50; Tr. 6328, 6331-32). At that time, pursuant to counsel's instructions, Kattie Adams, Sunshine's treasurer, visited with Ms. McCall at Sun Bank to try to obtain a loan commitment letter (Tr. 6328-32; Reece Associates Ex. 50). Ms. Adams was informed that the bank could not issue a loan letter for the requested3 million without first having certain information, including a list of the Sunshine principals and their business interests and affiliations (Tr. 6332-34). The information was not provided and no loan letter was issued (Tr. 6335-36).

30. It was not until the end of April 1987, that a further attempt to obtain a bank letter was made (Reece Associates Ex. 49; Tr. 6345). Ms. Adams revisited Ms. McCall on April 28, 1987, and showed her the letter of instruction she received from counsel and the sample loan commitment letter he had provided her (Tr. 6346). McCall again requested the list of shareholders, and gave Ms. Adams financial statement forms for each shareholder to complete. Ms. Adams assumed these forms would not have to be completed until after a grant (Tr. 6347, 6363-66). Two days later, Ms. English visited Ms. McCall at Sun Bank for the first time and supplied her with a list of Sunshine's shareholders and their affiliations (Sunshine Exs. 10, 10A). Ms. English knew that McCall had at her disposal personal financial information regarding both herself and Donald Quartel (Tr. 6277-78, 6280-81). The request for the loan commitment letter was referred to the bank loan committee (Tr. 6263, 6279).

31. A Sun Bank letter dated May 1, 1987, and signed by Ms. McCall states in pertinent part (Sunshine Ex. 10B):

> Our Bank has been involved in this type of project in the past and, based on our experience, your loan request of5,000,000.00 (five million dollars) with a repayment term of seven years, is one which falls within our guidelines. The rate of interest will be determined at time of approval. The loan would be conditioned on the grant by the FCC of a construction permit to Sunshine and the execution of all appropriate documentation.
>
> By means of this letter, we are requesting that you forward to our office a copy of your application to the FCC along with the appropriate proformas and financial statements.

32. None of the information referred to in the May 1, 1987 bank letter has been forwarded to the Sun Bank (Tr. 6267). Ms. English testified that she believes that this information need not be submitted to the bank until Sunshine's application is granted (Tr. 6266-67).

Cross - Interest Issue -- Orlando Television Partners

33. Jeanette S. Austin is employed as the News Director for the News Director for Noncommercial Educational Radio Station WMFE-FM, Orlando, Florida (OTP Ex. 8 at 1). Ms. Austin was originally hired by WMFE-FM as its Public Affairs Coordinator (*Id.*).

34. Ms. Austin is in the fourth tier of management at WMFE-FM (*Id.*). She reports to the Director of Programming, who in turn reports to the Vice- President for Programming, who in turn reports to the station's President (*Id.*).

35. In its application and "B" cut-off amendment, OTP reported that each principal will devote at least 40 hours per week to her duties at the proposed station (*Id.* at 3). Ms. Austin avers that this commitment contemplated that she would resign her position at WMFE (*Id.*).

36. Ms. Austin understands that Section 1.6 of OTP's partnership agreement requires her to resign from WMFE-FM before OTP's station commences operation (*Id.*). Section 1.6 of OTP's partnership agreement provides that no partner shall devote significant amounts of time and effort during normal business hours to any trade or business other than OTP without the written consent of the other partners (*Id.*).

37. In an amendment to OTP's application filed August 22, 1985, Ms. Austin is reported as being committed to resign from WMFE-FM in case of grant (*Id.*). By the terms of her employment contract with WMFE-FM, Ms. Austin is required to give 20 days notice before terminating her employment (*Id.*).

38. Ms. Austin does not participate in the formulation or adoption of basic station policies or in the making of other managerial decision. (OTP Ex. 7 at 2). Her duties and responsibilities are the production of daily news programs from Monday through Friday within the time periods and guidelines set by the station's management (*Id.* at 5).

39. Ms. Austin avers that management positions at WMFE-FM carry the title of manager (Tr. 2814).

Standard Comparative Issues

Marlin Broadcasting of Central Florida, Inc.

40. Marlin is a Florida corporation authorized to issue 7,500 shares of common voting stock (Marlin Ex. 1 at 1). A total of 700 shares have been issued (*Id.*). Marlin's shareholders, officers and directors are (*Id.*):

Name	Position	Percent of Ownership
Carol A. Surles	President, Director	14.3% (100 shares)
Carolyn M. Fennell	Vice President, Director	14.3% (100 shares)
Jean B. Raffa	Secretary, Director	14.3% (100 shares)
Paula Stuart	Treasurer, Director	14.3% (100 shares)
Paulette Clark	Director	14.3% (100 shares)
M. Jean Butler	Director	14.3% (100 shares)
Elisabeth Stuart	Director	14.3% (100 shares)

41. By a shareholder's agreement entered into on March 17, 1985, the shareholders and their spouses jointly and severally agree to guarantee a corporate note or line of credit up to60,000 in pursuance of the television broadcasting license (Highland Ex. 8).

42. The Articles of Incorporation for Marlin were filed on March 22, 1985 (Tr. 220). The By-laws are appended to the Articles (Florida Television Ex. 4). Stock certificates have been issued to the shareholders (Tr. 90-92, 157, 313-20, 410, 425, 444).

Integration of Ownership into Management

43. Marlin seeks 100 percent quantitative integration and each of the seven shareholders proposes to relinquish all other full-time employment and to devote full-time, at least forty hours per week, to the management of the station should Marlin be successful in this proceeding (Marlin Exs. 1-8).

44. Carol Surles, a Black female, proposes to be Marlin's General Manager, and her duties will include general supervision of all station employees and of each of the station's functional units; implementation of the station's policies; directing the station's long-range planning and development. The head of each department will report to and be responsible to Ms. Surles.

45. Ms. Surles received a B.A. from Fisk University, an M.A. from Chapman College and a Ph.D. from the University of Michigan (Marlin Ex., 2 p. 1.). Ms. Surles is currently the Associate Vice-President for Human Resources and an Assistant Professor of Management at the University of Central Florida in Orlando. Since 1978, Ms. Surles has served as the University's Director of Equal Opportunity and Affirmative Action Programs (Marlin Ex. 2, pp. 2-3).

46. Carolyn M. Fennell, a Black female, proposes to be Marlin's News Director, and her duties will include general supervision of all news related activities and personnel; formulating and implementing the station's policy for the overall functions of gathering, sorting, evaluating and broadcasting of news (Marlin Ex. 3, p. 5).

47. Ms. Fennell received a B.A. from Florida A&M University in English and Journalism. (Marlin Ex. 3, p. 1). Ms. Fennell is currently the Assistant Executive Director of Community Relations for the Greater Orlando Aviation Authority, in which position she has responsibility for the public and community relations activities for the Aviation Authority which oversees both the Orlando International Airport and the Orlando Executive Airport (Marlin Ex. 3, p. 2).

48. Jean Benedict Raffa proposes to be Marlin's Director of Programming, and her duties will include the acquisition, development and scheduling of all programs broadcast by the station. In addition, she will supervise all station staff assigned to programming functions (Marlin Ex. 4, 4).

49. Ms. Raffa received B.S. and M.S. degrees from Florida State University and a doctorate in Education from the University of Florida. The title of Ms. Raffa's doctoral dissertation was "Values on Television Shows Watched by Elementary School Aged Children; The Development and Implementation of a Methodology" (Marlin Ex. 4, p. 1). From 1977 to 1985, Ms. Raffa was an Adjunct Instructor of Elementary Education at the University of Central Florida in Orlando, and she has also held several educational consulting positions (Marlin Ex. 4, pp. 2-3).

50. Paula J. Stuart proposes to be Marlin's Vice President for Finance, chief financial officer, and her duties will include the supervision of all station personnel involved in finance, accounting, collections, data processing, management information systems, purchase approval, benefits programs, insurance and risk management (Marlin Ex. 5, pp. 2-3). Ms. Stuart, who is a Certified Public Accountant, received a B.A. degree in Finance from the University of South Florida and did graduate work at Rollins College in Winter Park, Florida (Marlin Ex. 5, pp. 1-2). Ms. Stuart is currently the Senior Vice President for Public Finance of M.G. Lewis Co., an investment banking firm in Winter Park, Florida (Tr. 130, 162), and prior to that she was a Vice President for Public Finance at the Orlando office of Shearson Lehman Brothers. From 1982 to 1985, Ms. Stuart was the Deputy Director of Finance for the City of Orlando (Marlin Ex. 5, p. 1).

51. Paulette W. Clark proposes to be Marlin's Director of Promotion and Publicity, and her duties will include responsibility for research, promotion, and publications; supervising station personnel involved in artwork and creative services; and building audience awareness through advertising, promotion and public service (Marlin Ex. 6, p. 2).

52. Ms. Clark received a B.A. from Florida State University in Advertising Design and is currently the co-owner of a graphic arts business (Marlin Ex. 6, p. 1).

53. M. Jean Butler, a Black female, proposes to be Marlin's Director of Station Marketing, and her duties will include primary responsibility for the revenue-raising activities of the station; formulation and implementation of the station's planning effort for capturing national and local advertising; and general supervision of the station's sales personnel (Marlin Ex. 7, p. 3).

54. Ms. Butler received a B.S. from St. Louis University and an M.S. from Rollins College (Marlin Ex. 7, p. 1). Ms. Butler is currently the co- owner of two retail establishments in the Orlando area (Marlin Ex. 7, p. 2; Tr. 320-321), and has, in a previous position, managed as many as 100 employees (Tr. 301). In addition, Ms. Butler was form 1971 to 1977 as Assistant Professor at Florida Technological University (now known as University of Central Florida) in Orlando (Marlin Ex. 7, p. 2).

55. Elisabeth Stuart proposes to be Marlin's Director of Community Affairs, and her duties will include an assessment of the community's programming needs and interests, formulating and implementing special events and other activities in an effort to maintain a dialogue between

the station and those within its service area. She will also supervise station staff assigned to the Community Affairs Department, as well as employees from other departments that may be assigned temporarily to assist in fulfilling community affairs functions and projects (Marlin Ex. 8, p. 3).

56. Ms. Stuart received a B.S. from the University of Florida, and completed the real estate licensing course at the University of Central Florida (Marlin Ex. 8, p. 1). Ms. Stuart has been a realtor associate with Merrill Lynch Realty and was the Director of Recreation Therapy for the Orlando Regional Medical Center (Marlin Ex. 8, p. 2).

Local Residence

57. Each of Marlin's shareholders currently resides within the principal city contour of Marlin's proposed station (Marlin Exs. 2-8). Carol Surles has lived in the Orlando area for more than seven years (Tr. 340). Carolyn Fennell has lived in the city of Orlando for seven years (Marlin Ex. 3, p. 11). Jean Raffa has lived in the Orlando area for more than 16 years (Marlin Ex. 4, p. 1). Paula Stuart has lived in the city of Orlando for four years (Marlin Ex. 5, p. 1). Paulette Clark has lived in the city of Orlando for 17 years (Marlin Ex. 6, p. 1). M. Jean Butler has lived in the Orlando area for 16 years (Marlin Ex. 7, p. 1). Elisabeth Stuart has lived in the city of Orlando for 16 years (Marlin Ex. 8, p. 1).

Civic Participation

58. Ms. Surles has been active in the following organizations: a member of the Board of the Orlando Leadership Council since 1980 and the Council's President from 1984 to 1985; a member of the Junior League of America; a member of Pi Lambda Theta Honor Society since 1977; a member of the Golden Key Honor Society since 1967; a member of the Florida Speech Pathology and Audiology Council; a member of the Association for Counselor Education and Supervisor; a member of the American Personnel and Guidance Association; a member of the American Cancer Society; a member of the American Association of University Professors; a member of the League of Women Voters; a member of the American Association of University Women; a member of the Washington Council on Alcoholism; a member of the Metropolitan Orlando Council on Alcoholism; a member of the National Council on Alcoholism; a member of the Orlando Human Relationship Board since 1983 (by appointment of the mayor or Orlando); a member of the Steering Committee of Leadership Orlando (a program of the Orlando Chamber of Commerce); a member of the National Urban league since 1982; a member of the Women's Network Advisory Board; a member of the NAACP; a member of the Florida State University System EEO Task Force since 1978; a member of the WMFE Television/Radio (PBS) Advisory Board; a member of the WMFE Television and Radio (PBS) Board of Trustees; a member of the University of Central Florida/Rollins College Consortium research group to study problems of alcoholism; a member of Florida's State research committee for the Greater Orlando area to study teenage alcoholism.

59. Carolyn M. Fennell has been active in the following organizations: a member of the United Way Board of Directors; a member of the City of Orlando Transportation Permit Board; a member of the Central Florida Association of Black Journalists; a member of the Board of Directors of the Florida Symphony Orchestra; member and in 1983, Chairman, of the Greater Orlando Chamber of Commerce International Marketing Committee; a Trustee of the Loch Haven Art Center; a member of the Board of Directors, and during 1986- 87, Vice President of the Metropolitan Orlando Urban League; a member of the Orange County Commission on the Status of Women; a member of the Orlando/Winter Park Junior League; a member of the Board of Directors of the Women's Network; a member of the WMFE Public Television Advisory Board; Vice President of the Theater on the Park (Black Repertory Company); a member of the University of Central Florida Town and Gown Council; a member of the Valencia Community College Hospitality Management Advisory Committee; a member of the Valencia Community College Center for Continuing Education for Women; former Chairman and Vice Chairman of the Communications/Marketing Committee of the Airport Operators Council International (Marlin Ex. 3, p. 6).

60. Jean B. Raffa has been active in the following organizations: a member and in 1974-75 President and Vice-President of Harbor Lights, a volunteer group for school for children with learning disabilities; a member of the Easter Seal Society and Co-Host of the Society's Telethon from 1977- 1980; a member of the Dommerich Elementary School P.T.A.; an Additions Volunteer at the Dommerich Elementary School; a member, Vice-President (1985- 1986), and President (1986-1987) of the Maitland Junior High P.T.A.; a member of the Park High School Crew Boosters; a member of the Citrus Bowl Ladies Luncheon Committee; a member from 1973-74 Parliamentarian of the Florida Technological University Women's Club; and in connection with the Church of the Good Shepherd, Ms. Raffa is currently a member of the Vestry, Chairman of the Education Commission, a member of the Good Shepherd Day School Board, and she has been a member of the Church's Youth Council, a member of the Educational Program Committees on sex education and parenting, an educational consultant for Vacation Bible School, a member of the Program Committee of the Episcopal Diocese of Central Florida Workshop on Instruction and Evangelism, an instructor in the Diocese In-Service Workshop for Sunday School Teachers, and a Leader in the College Prayer Group (Marlin Ex. 4, p. 6).

61. Paula J. Stuart has been active in the following organizations: a member of the Project 2000 Committee of the Orlando Chamber of Commerce; a member of the Economics Club; a member of the Board of the Boys Club of Orlando; a member of the University of Central Florida College of Business Administration Advisory Board; a member of Leadership Florida and of Leadership Orlando (Marlin Ex. 5. p. 3).

62. Paulette W. Clark has been active in the following organizations: The Lake Silver Elementary School including a member of the Board, Chairman of various projects, historian, Vice-President for Fund Raising, a member of the organizing committee of the Reading Olympics, an Additions Volunteer, and Chairman of the Advisory Board; the Robert E. Lee Junior High School including member of the Board, Coordinator of the Addition Volunteer Program, Parent Advisor to Local School Board Member, member of the Orange County Parent Study Group on a middle school proposal, a founding member of the ABC (Advisory Board Coalition), an organization to coordinate parental concerns among inter-city schools, League of Women Voters; the Girl Scouts Cookie Chairman; a volunteer in BETA (Birth Education, Training and

Acceptance); the area coordinator of the Mother's March for the March of Dimes; a member of the organizing committee for a Hospice fundraiser; the Chairman of the art acquisition committee of the Orlando Mayor's Art Advisory Board; and a judge of the Coral Gables High School Scholarship Art Competition (Marlin Ex. 6, pp. 2-4).

63. M. Jean Butler has been active in the following organizations: a member of PESO (Marlin Ex. 7, p. 3); a member of the Board of Directors and past Vice-President of the Frontline Outreach since 1975; a member of the Board of Directors of the Orlando Metro Unit of the American Cancer Society since 1980; Vice President of the Thousand Plus Committee, A.C.S. since 1980; a founding member of Coeur de Coeur, auxiliary of the American Heart Association member and past President of Delta Sigma Theta sorority; member and past President of the Orlando Chapter of Links; member and past President of Orlando Chapter of Girl Friends; founding member of the National Association of University Women; member of the Board of Directors of the Orlando Opera Company since 1982; a member of the Board of the Florida Hospital Golden Gala Circle of Friends since 1982; a member of the University of Central Florida, College of Health Advisory Board since 1980; a member of the Medical Record Administration Advisory Board of the University of Central Florida since 1978; a member of the Orlando Mayor's Youth Employment Task Force; a member of the Women's Business Educational Council of Florida, Inc.; member and past Chairman of the Orange County Medical Society Auxiliary, Florida Medical Foundation (Marlin Ex. 7A; Tr. pp. 309-317).

64. Elisabeth H. Stuart has been active in the following organizations: member of the Junior League of Orlando Winter Park since 1972; founding member and member of the Board of Directors of Seagrove House for emotionally troubled children; member and past Vice-President of the Town and Gown Council of the University of Central Florida; founding member of BETA (Birth, Education, Training and Acceptance) Auxiliary, a home for unwed mothers; a Brownie troop leader for the Citrus Council of Girl Scouts; past Chairman of the Local School Advisory Board of Blankner Elementary School; past Vice President of Blankner Elementary School P.T.A.; past Chairman of ABC (Advisory Board Coalition) dealing with problems of Orlando schools; member of the Florida Citrus Sports Association; a Sunday School teacher at the College Park Baptist Church; a member of the Board of Directors of We Care; a member of the Board of Directors of the Central Florida Chapter of the American Red Cross; organizer and Chairman of Charity Horse Show to benefit Central Florida Zoo; Chairman of Heart Sunday for the Central Florida Heart Association; member of the Downtown Development Committee; a member of a study commission appointed by the major to research and recommend plans for a municipal auditorium; a member of Stephens College Alumnae organization. In addition, Ms. Stuart has been involved with the preservation of historical sites in the Orlando area (Marlin Ex. 8, pp. 3-6).

Broadcast Experience

65. Carol Surles is one of 20 members of the Board of Trustees of WMFE, public broadcasting stations and was previously a member of WMFE's Advisory Board (Marlin Ex. 2; Tr. 362). From June 1980 to June 1981, Ms. Surles was a hostess and associate producer of two television shows on WMFE-TV: "VIP" and "Postscripts" (Marlin Ex. 2, p. 9).

66. Carolyn Fennell was from 1984 to 1986 the hostess of a public affairs television program, "Impact," on WOFL-TV. From 1976 to 1978 she was International News Research/Personal Production Assistant to Peter Jennings, then Chief Foreign Correspondent of ABC News in London. In addition, from 1975-1976, Ms. Fennell was news broadcaster and reporter at radio stations WTNT and WONA, Tallahassee, Florida (Marlin Ex. 3, pp. 3-5).

67. Jean Raffa was from 1978 to 1980 the Coordinator of Children's Programming for WFTV, Channel 9 in Orlando and was the producer of "Kidsworld." In addition, Dr. Raffa was the originator, writer and producer of the ACT award-winning children's television show, "On the Go" (Marlin Ex. 4, p. 5).

Diversification of Control of Mass Media

68. None of the seven Marlin shareholders has any other ownership interest in any medium of mass communications (Marlin Ex. 2, p. 9; Ex. 3, p. 5; Ex. 4, p. 4; Ex. 5, p. 2; Ex. 6, p. 1; Ex. 7, p. 3; Ex. 8, p. 2).

Orlando Television Partners

69. OTP is a Florida general partnership which was formed for the purpose of constructing and operating a new commercial UHF television station on Channel 27 at Orlando, Florida. Its principal office is presently situated at 3348 Edgewater Drive in Orlando, Florida, but will be moved to a new location within the city limits of Orlando (where it will be co-located with the proposed television station studio) prior to the commencement of operation of the partnership's proposed television station (OTP Ex. 1).

70. OTP is comprised of six general partners who hold the following ownership interests:

	General Partner
Mary L. Demetree	25 percent
Norma E. Coto	25 percent
Barbara C. Roper	20 percent
Martha Walton	15 percent
Jeanette S. Austin	10 percent
Deborah R. Sawruk	5 percent

71. All six partners participate in the management of the partnership's business and will participate full-time (at least forty hours per week) in the day-to-day management and operation of OTP's proposed television station (OTP Ex. 1).

72. A written Partnership Agreement was executed by each of the six partners on the "B" cut-off date (OTP Ex. 1; Tr. 2295). The Partnership Agreement was amended on January 8, 1986. It requires that all actions, functions and affairs have to be pre-approved by a majority in interest of the partners (Reece Associates Ex. 34; Tr. 2416, 2418-2420).[6] It also provides that certain acts taken on behalf of the partnership require written delegation by partners representing 51 percent of the ownership of the partnership (Reece Associates Ex. 34).

73. The six full time managerial positions to be held, respectively, by the six general partners were decided upon by them prior to the "B" cut-off date (Tr. 2424-2429), 2481, 2520, 2628-2629), 2750-2751, 2880-2881). The provision of the agreement requiring written

delegation of authority does not apply to the managerial positions proposed for each of the partners (Tr. 2462-2463, 2750-2751).

Integration of Ownership into Management

74. Mary L. Demetree, a female and 25 percent general partner, will serve full-time (minimum of 40 hours per week) as General Manager of OTP's proposed Orlando television station. As such, her duties will include oversight and coordination of all station departments and personnel; participation in the development of the station's programming, public service, editorial, commercial, employment and other policies; participation in the selection and scheduling of the station's programming; preparation of short-term and long-range business and financial plans for the station; and monitoring of compliance with federal, state, and local regulations (OTP Ex. 2, p. 2).

75. Norma E. Coto, an Hispanic female and 25 percent general partner, will serve full-time (at least 40 hours per week) as Business and Sales Manager of OTP's proposed Orlando television station. As such, she will manage all aspects of the commercial and financial activities of the proposed facility. Her duties will include the hiring and supervision of business and sales personnel; the sale, selection and scheduling of advertising spots; the implementation of the station's commercial policies; monitoring of audience ratings and the effectiveness of programming and scheduling decisions (in consultation with the Program Director and others); participation in the development of the station's programming, public service, editorial, commercial, employment and other policies; the preparation of department budgets (in consultation with department heads); the monitoring of budgetary compliance; and the payment of the station's financial obligations (OTP Ex. 4, pp.1-2).

76. Barbara C. Roper, a female and 20 percent general partner, will serve full-time (minimum of 40 hours per week) as Assistant General Manager and Station Manager of OTP's proposed television station. In these positions, she will be responsible for the supervision and management of all aspects of the station's day-to-day operations. Her duties will include supervision and coordination of the various departmental operations and personnel; participation in the selection and scheduling of the programs to be broadcast by the station; and participation in the development and implementation of the station's programming, public service, editorial, commercial, employment and other policies (OTP Ex. 3, p. 3).

77. Martha Walton, a Black female and 15 percent general partner, will serve full-time (at least 40 hours per week) as Director of Public Affairs and Community Relations for OTP's proposed Orlando television station. She will be in charge of ascertaining local Orlando area needs and interests and of organizing the proposed television station's response to them. Her duties will include consultation with the station's Minority And Women's Affairs Advisory Board; personal and telephone contacts with community leaders and other residents of the Orlando area to determine local problems, needs and interests; planning and scheduling (in consultation with the Program Director and others) of local public affairs programs; obtaining local leaders and experts to appear on the station's public affairs programs; production and scheduling (in consultation with the Program Director and others) of public service announcements; and participation in the development of the station's programming, public service, editorial, commercial, employment and other policies. In addition, Ms. Walton will be responsible for monitoring the station's Equal Employment Opportunity Program and for maintaining the station's public inspection file (OTP Ex. 6, pp. 1-2).

78. Jeanette S. Austin, a Black female and 10 percent general partner of OTP, will serve full-time (minimum of 40 hours per week) as News Director of its proposed Orlando television station. In this position, she will manage all aspects of the news gathering and dissemination activities of the proposed facility. Her duties will include the hiring and supervision of news personnel; the determination of the nature and extent of coverage of news events; the scheduling of news programs (in consultation with the station's Program Director, Station Manager and General Manager); the preparation of the News Department budget (in consultation with the station's Business and Sales Manager, Station Manager and General Manager); and participation in the development of the station's programming, public service, editorial, commercial, employment and other policies (OPT Ex. 7, pp. 1-2).

79. Deborah R. Sawruk, a female and 5 percent general partner of OTP, will serve full-time (at least 40 hours per week) as Program Director of its proposed Orlando television station. In this position she will manage all aspects of the acquisition and scheduling of station programming. Her duties will include the hiring and supervision of programming personnel; the negotiation and execution of program purchase agreements; the development and adjustment of program schedules (in consultation with other managers and department heads); the monitoring of local audience ratings and competitive station offerings; participation in the development of the station's programming, public service, editorial, commercial, employment and other policies; and the scheduling and holding of consultation meetings with the station's Minority And Women's Affairs Advisory Board (OTP Ex. 5, pp. 1-2).

Local Residence

80. Ms. Mary L. Demetree has resided in the Orlando area virtually all of her life. Since 1983 she has lived in Winter Park within the station's city grade contour and for over twenty years prior to 1983 she lived in Orlando (OTP Ex. 2, p. 3).

81. Ms. Norma E. Coto has resided continuously in the Orlando area for more than 21 years. For more than the past seven and one-half years she has lived just outside the city limits of Orlando and within the city grade contour of OTP's proposed television station (OTP Ex. 4, p. 2).

82. Ms. Barbara C. Roper has been a resident of the Orlando area for over 35 years. For the past 33 years she has resided in Windermere, Florida which is located within the city grade service contour of OTP's proposed television station (OTP Ex. 3, p. 3).

83. Ms. Martha Walton has resided at her current home within the city limits of Orlando, Florida for approximately 34 years (OTP Ex. 6, p. 2).

84. Ms. Jeanette S. Austin has been a resident of the Orlando area since 1971. Since 1985, she has lived in Apopka, Florida, a suburb of Orlando, located within the city grade contour of OTP's proposed television station. For eight years immediately prior to her move to Apopka, Ms. Austin resided within the Orlando city limits (OTP Ex. 7, p. 1).

85. Ms. Deborah R. Sawruk has resided in the Orlando area continuously for approximately 12 years. For the past eight years she has lived in Winter Park, several blocks from the Orlando city limits and within the city grade contour of OTP's proposed Orlando television station (OTP Ex. 5, p. 2).

Civic Participation

86. Ms. Mary L. Demetree has been a leader and an active participant in various civic activities within the Orlando area. Since 1983 she has served as the volunteer Head of Nursery one night each week for the Birth, Education, Training and Acceptance of Unwed Mothers (BETA) program in Orlando. In this role, Ms. Demetree coordinates the activities and interactions of the unwed mothers at the BETA center with the abused children in the BETA nursery. She also observes the activities of the abused children and prepares reports on such activities for the BETA Center's professional staff (OTP Ex. 2, pp. 3-4).

87. From 1981 to the present, Ms. Demetree has been a member of the Central Florida Right To Life organization and has served on its Board of Directors since 1983. As a Board member, she is currently involved in the development of new projects and in raising funds for various programs (OTP Ex. 2, p. 4).

88. In 1983, she was the Chairperson of the local Hospitality Committee for the National Right To Life Convention which was held that year in Orlando. She was in charge of supervising the approximately 25 persons on the Hospitality staff.

89. Ms. Demetree was an active member of the Greater Orlando Crime Prevention Association (GOCPA) in 1982. As such, she spoke to various neighborhood groups concerning neighborhood watch patrols and other ways to prevent crime in their neighborhoods.

90. Since 1982, Ms. Demetree has been a member of the Junior League of Orlando-Winter Park. In addition to BETA and GOCPA which she began as Junior League activities, she has been involved in raising funds to support Junior League projects.

91. Ms. Demetree has been a member of the Central Florida Young Republican Club, located in Winter Park, since 1983. From 1981 to 1984, she worked as an alumna of the Kappa Kappa Gamma Sorority with students and sorority members at Rollins College, Winter Park, Florida, to improve relationships among the sorority members, students and local residents (OTP Ex. 2, p. 4).

92. Recently, Ms. Demetree became a member of Florida Executive Women, a business and executive women's group in Orlando. In 1984, she was selected as an Outstanding Young Woman of America by that organization (OTP Ex. 2, p. 5; Ex. 3, p. 10).

93. Ms. Coto has been the primary adult sponsor of Las Avispas, the largest Hispanic-American student group in the Orlando area. In this position, she assists student members in the conduct of the various Las Avispas activities. Although Las Avispas is a student organization at Bishop Moore High School where Ms. Coto is Chairman of the Foreign Language Department, her participation in the organization is not required in connection with her employment and she is not compensated for it (OTP Ex. 4, pp. 3-4).

94. For the last 19 years, Ms. Coto has been a member of the Women's Auxiliary of the Orange County Medical Society. In 1984, she was active in the Orange County Medical Political Action Committee and helped raise funds for the reelection of Representative Daniel Webster to the Florida House of Representatives (OTP Ex. 4, p. 4).

95. Ms. Coto, for the past 11 years, has been an active member of the Home And School Association of Bishop Moore High School, where her children attend. In 1985 and 1986, she served as the Co-Chairperson of the Association's annual fundraising auction. During 1984 and 1985, she was the Co-Chairperson of the Gold 500, the Association's annual dinner dance and fundraising event. She has also hosted numerous social gatherings to benefit the Association's scholarship fund (OTP Ex. 4, pp. 4-5).

96. Ms. Coto was the Co-Chairperson of the Youth Program at Holy Family Church in Orlando from 1979 to 1981. She was responsible for coordinating religious education program for various age groups and for helping to integrate Hispanic students into school activities (OTP Ex. 4, p. 5).

97. Ms. Coto was a Board Member of the Diocesan Board of Mary Magdalen Church form 1976 to 1978. She assisted in the preparation of the annual budgets for the parish church and school, laid the basis for the addition of a school kindergarten and supervised a number of fundraising activities.

98. Ms. Coto also has been involved during the past three years in raising money for the University of Central Florida, particularly from businesses represented in the Orlando area Latin Chamber of Commerce (OTP Ex. 4, p. 5).

99. Ms. Roper served on the Board of Trustees for Noncommerical Educational Stations WMFE-TV/FM in Orlando, Florida form 1970 to 1983. Throughout her tenure on the Stations WMFE-TV/FM Board, Ms. Roper participated actively in the formulation of the policies and the making of the decisions which have led to the development of public broadcasting within the Orlando area (OTP Ex. 3, p. 4).

100. Ms. Roper is one of the founding members of the Florida Literacy Coalition which became a chartered organization in March, 1985. This organization, located in Orlando, developed out of the need to coordinate activities with other literacy groups in the state. The charter members of the Coalition are the State Department of Education for Florida, the Florida library system, Laubach Literacy International, Literacy Volunteers of America, and Florida Lutheran Church Women. She served as the President of the Florida Literacy Coalition in 1985 and 1986.

101. In 1968, Ms. Roper founded the Adult Literacy League of Orlando/Winter Park. Since that time, she has served as its President and has been a member of the Executive Committee for almost the entire period. In addition, she has served as a trainer of volunteer tutors and has started literacy programs in over 15 cities (OTP Ex. 3, p. 7).

102. Ms. Roper has been an active member with the Central Florida YMCA since 1969, when she was first nominated to serve on the Northwest Orlando Board of Directors. Shortly thereafter, she started the West Orange YMCA and served as its Branch Chairperson for several years. She has remained on the YMCA Central Florida Board since 1969 and has served as its Secretary for three terms and as its Vice Chairperson for one term and its Chairperson for two terms. She continues to be involved

with the YMCA Board and its committees and was the Chairperson of the 1985 Nominating Committee (OTP Ex. 3, p. 8).

103. Ms. Roper has served as a member of the Board of the Hospice of Central Florida as well as a member of its Executive Committee for the past several years (OTP Ex. 3, p. 9).

104. Over 25 years ago, Ms. Roper helped start the Orlando Opera Company--the first opera group in Orlando, Florida. She served on its Guild for several years and has been a member of its Board for more than six years. She has also served on its Executive Committee in several capacities.

105. Ms. Roper was a member of the Board of Directors of the Loch Haven Art Center for four years. For two years, she was a member of the Executive Committee and the Endowment Committee, which is charged with raising financial support for the Center. Her participation ended in May of 1986.

106. Ms. Roper has served on the Central Florida Commission on the Status of Women. Her involvement with the Commission began in 1976 when she founded the Commission on Women for Orlando. This organization developed into the Central Florida Commission and included representatives from a total of five counties. She served as the Chairperson of the Commission until 1980. She also founded the Central Florida Educational Consortium for Women and served as its Chairperson for over a year (OTP Ex. 3, p. 10).

107. Ms. Roper is a member of Florida Executive Women, a business and executive women's group located in Orlando, and served as its Vice President in 1984. She is also a member of Florida Women's Network and served on its Executive Committee for one year. She has been actively involved with the West Orange Junior League for 25 years and continues to be a sustaining member (OTP Ex. 3, p. 10).

108. Ms. Roper was a member of the First Presbyterian Church in Orlando, Florida for many years, during which time she served as a co-teacher of the Questerian Class and an adult Sunday school class. Approximately eight years ago, she left that church to be a founding member of the Church of the Lakes of which she is a Ruling Elder. She has served on the Session of the Church of the Lakes and chaired its Building Committee during the construction of the first sanctuary/centrum in 1982 (OTP Ex. 3, pp. 10-11).

109. Ms. Roper has also been a member of the Center for Continuing Education for Women in Orlando for over 12 years. She has also served on the Board of Directors of the West Orange Health Care Foundation, Inc. (1982 - present); on the Board of Directors of Florida House; on the Everything Is Coming Up Roses Selection Panel, which provides recognition awards to Central Florida community volunteers; on the Board of Directors of The Door, Inc. a drug abuse treatment organization; and on the Board of Directors of the Southwest Community Mental Health Center which serves Orlando's Black community (OTP Ex. 3, p. 11).

110. Since 1984, Ms. Walton has been a member of the Board of Directors of the Central Florida Commission on the Status of Women. She was appointed to this position by the Orange County Board of Commissioners in December, 1983. In this position, she participates in the conduct of workshops and hearings in the Orlando area and in the discussion of women's issues with local government officials.

111. Ms. Walton is a member of the Board of Directors of the Area Agency on Aging for H.R.S. District VII (Orange, Seminole, Osceola and Brevard Counties), which has been organized under the auspices of the East Central Florida Regional Planning Council. This agency is responsible for developing a system of services to help maintain the independence and dignity of elderly local residents, with special emphasis on helping them to avoid institutionalization (OTP Ex. 6, p. 3).

112. Ms. Walton is also a member of the Orlando Branch of the National Association of University Women and has served as the Branch's Treasurer since 1984. Among other activities, this Branch awards scholarship each year to a worthy young person from the Orlando area. She received the Association's Certificate of Achievement in 1984 (OTP Ex. 6, pp.3-4).

113. She has been an active member of the Central Florida YMCA for over five years and served on its Board of Directors from 1980 to 1983.

114. During 1982, Ms. Walton served as a member of the Steering Committee of the United Fund For The Arts, a group formed to raise and distribute funding for the arts within Orange County.

115. In 1981, she was a member of the Board of Trustees of the Central Florida Chapter of the Leukemia Society of America and served as an Assistant Director of the Chapter's annual telethon. Also in 1981, she was a member of the Florida Symphony League (OTP Ex. 6, p. 4).

116. Ms. Walton has been active as a Selection Panel member for the Everything Is Coming Up Roses Award program (five years), which honors Central Florida community volunteers in various social services areas; as a director of the Singing Boys of Orlando (1977-1978); as a member and director of Our Saviour Lutheran Church; as a member of the Lutheran Women Missionary League; and as a member of the Orlando Mineral and Gem Society (OTP Ex. 6, pp. 4-5).

117. Ms. Austin has participated in the following civic activities. From 1983 to 1985, she was a member of the Board of Directors of the Jewish Family Services of Greater Orlando, Inc., a social service organization serving Orange and Seminole counties. As a Board member, she was involved in the selection, planning and oversight of the organization's counseling, charitable, informational and other activities. She also served as the Chairman of the organization's Public Relations Committee, which was responsible for disseminating news releases and other materials to increase public awareness of the nature and availability of the group's functions (OTP Ex. 7, pp. 3-4).

118. During the past seven years, Ms. Austin has accepted numerous speaking engagements at various schools, churches, women's groups, seminars and meetings within the Orlando area. She frequently has participated in school career days in order to help children learn of the opportunities in the communications business and to encourage them to develop the skills necessary to work in the field. She has often spoken on similar topics before meetings of various local women's groups, particularly those associated with area churches. While she often speaks on broadcast-related opportunities and issues, these activities reflect her personal efforts to help other Orlando

area residents since Ms. Austin has not been required to perform these functions as part of her job nor she been compensated by her employers.

119. In 1979 and 1980, she was a member of Orlando Mayor Carol Langford's Complete Count Committee, which was formed to promote and encourage a complete and accurate count of Orlando's population during the 1980 United States Census.

120. Ms. Austin was a Board member of The Door, Inc., an Orlando drug rehabilitation center, in 1972 and 1973. In this position, she assisted in the selection of the Center's programs and activities (OTP Ex. 7, p. 4).

121. In 1972, Ms. Austin was a member of Orlando Links, Inc., a local Black woman's educational and cultural organization which put on concerts and shows for the community.

122. From 1983 through the present, Ms. Sawruk has participated in numerous events sponsored by the Winter Park Presbyterian Church Senior High Fellowship. Her activities have included the organization and coordination of progressive community dinners, the supervision of teen social functions and other volunteer roles.

123. Ms. Sawruk was an active member of the Winter Park Junior High School PTA from 1981 through 1984. Her activities included the recruitment of new members, the organization and conduct of fundraising activities, the provision of assistance to teachers, the furnishing of supervision at social functions and the taking of pictures for the school yearbook.

124. During 1982 and 1983, she was active in the Orlando Navy Base Nondenominational Church's fellowship program. Among other things, she organized donations of food for the program and assisted in various program functions.

125. During this same period, Ms. Sawruk served as a volunteer solicitor for Meals on Wheels, a local program which furnished meals to needy and/or infirm persons in the Orlando area.

126. Ms. Sawruk has been an active volunteer fundraiser and canvasser in various local political campaigns, including those of candidates for Mayor of Winter Park (1981-1982), for Circuit Court Judge (1980-1981), and for Orange County School Board (1978-1979).

127. From 1977 through 1981, Ms. Sawruk helped in the organization and conduct of Pet Fair, the annual fundraising event for the Orlando Science Center which is the city's museum. Among other things, she solicited contributions from Orlando area businesses, suggested and implemented the Flea Market attraction at the Fair, sold admission tickets and assisted in the conduct of the event. She served as Chairperson of the Flea Market in 1978-1979 and as Co-Chairperson of the Pet Fair itself in 1979-1980.

128. From 1977 to 1979, she was a volunteer worker at the Orlando Science Center, starting as a volunteer salesperson in the Center's gift shop and then subsequently served as an exhibit tour guide, lecturer and demonstrator.

129. Ms. Sawruk was a member of the Lakemont Elementary School PTA from 1978 to 1981. She actively participated in the school's two largest fundraising events--the Halloween and Spring Carnivals and worked as a volunteer classroom and library assistant at the school (OTP Ex. 5, p. 4).

130. Ms. Sawruk worked as a volunteer fundraiser for PESO (Participation Enriches the Arts and Sciences Organization), a Central Florida cultural organization, from 1977 to 1981. She served as a member of the Community Advisory Board of Robinson's Department Store in Orlando in 1979 and 1980 (OTP Ex. 5, p. 5).

Broadcast Experience

131. Barbara Roper's involvement with public broadcasting in the Orlando area began in 1969, when she conducted a survey on behalf of the Orlando-Winter Park Junior League to determine whether the area would support a public television station. She served as the Vice President of the Board in 1971, the President of the Board in 1972, the Chairperson of the Board in 1973 and as a member of its Executive Committee for several years thereafter. As President of the Board, Ms. Roper was extensively involved in the negotiations for a new Station WMFE-TV tower site and in the improvement of the station's technical facilities. Throughout her tenure on the Station's WMFE-TV/FM Board, Ms. Roper participated actively in the formulation of the policies and the making of the decisions which have led to the development of public broadcasting within the Orlando area (OTP Ex. 3, p. 4).

132. Ms. Roper was a member of the national Board of Trustees of the Public Broadcasting Service (PBS) from 1972 to 1979. She served as the Chairperson of PBS' Human Resources Committee (1975 to 1978) and as a member of its Executive Committee, Broadcasting Committee and Program Committee. Ms. Roper represented PBS on the Corporation for Public Broadcasting (CPB) Task Force with respect to the status of women and minorities in public broadcasting and represented PBS in negotiations with CPB for financial and programming support. During her tenure on the PBS Board, she visited numerous public television stations in the United States, Japan, Taiwan and Europe to obtain information for PBS concerning programming and operational methods.

133. Ms. Roper is a founding member of the National Association For Public Broadcasting Stations (NAPTS). She served on its Board of Trustees from 1979 to 1982; served as Chairperson of its Nominating Committee in 1981 and 1982; served on its Executive Committee, and served on the Search Committee for its President/Chief Executive Office (OTP Ex. 3, p. 5).

134. Jeanette Austin has been employed as Public Affairs Coordinator and then News Director of Noncommercial Educational Broadcast Station WMFE-FM in Orlando, Florida since 1980. In this position, she reports to the station's Director of Programming, who determines the scheduling of news programs and keeps Ms. Austin apprised of the news policies and guidelines set by station management.

135. She was the station's principal on-the-air news reporter until September, 1985. Her duties now include the assignment of the station's four full-time and one part-time reporters to news stories, the writing or review of news stories and the performance of other duties involved in the production of the station's daily (Monday through Friday) news program and headline reports. Ms. Austin announces the station's 10:00 a.m. and 2:00 p.m. headline reports and acts as a fill-in during its 4:00-5:00 p.m. news program when needed. In 1984, she received

the first Pioneer Journalist Award from the Central Florida Association of Black Journalists and broadcasters (OTP Ex. 7, 5).

136. From 1975 to 1980, Ms. Austin was employed at Station WORL(AM) in Orlando. She started there as a part-time weekend announcer (1975-1976) and later became the station's full-time announcer during the afternoon drive time period (1976-1978). She then served as the station's News Director from 1978- 1980, which essentially meant that she was its one-person news department responsible for preparing and delivering approximately ten newscasts daily. During the latter 1978-1980 period, Ms. Austin was also responsible for producing, directing and hosting Station WORL(AM)'s Sunday morning talk show entitled "Eye on Central Florida." In 1979, she received the Outstanding Achievement in Communications Award from the Delta Sigma Theta Sorority.

137. During the period from 1971 to 1976 Ms. Austin was a news reporter, Women's Editor (1972-1973) and Noon News Anchor (1974-1976) at WESH- TV in Orlando. Her responsibilities there included general and special assignment reporting, weekend newsroom operation, coordination of field reporters, scheduling of guests for public affairs interview programs, writing and delivering weekly commentaries and producing a weekend special feature. In 1975, she won a Journalism Award from the Greater Orlando Press Club for the Best Electronic Report or Series On Consumer Affairs and in 1973, she won an award from the same organization for the Best Feature Report (OTP Ex. 7, p. 6).

Diversification

138. OTP does not have any direct or indirect ownership interest in, nor any connection with, any media of mass communications (OTP Ex. 1, p. 2). Four of OTP's six partners, namely Mary Demetree, Norma Coto, Deborah Sawruk and Martha Walton also do not have any mass media ownership interests or connections (OTP Ex. 2, pp. 1-2; Ex. 4, p. 1; Ex. 5, p. 1; Ex. 6, p. 1).

139. Jeanette S. Austin, a general partner in OTP is presently employed by Noncommercial Educational Radio Station WMFE-FM, Orlando, Florida, as News Director. From the beginning of her participation in OTP, Ms. Austin has committed herself to resign her employment position at Station WMFE-FM in order to work full-time (at least forty (40) hours per week) as the News Director of OTP's proposed Orlando television station (OTP Ex. 8, p. 30).

140. In an amendment to the OTP application filed August 22, 1985 and in an affidavit executed November 21, 1985, Ms. Austin reaffirmed her commitment to resign her position at Station WMFE-FM, and to sever all employment connections with that station and its licensee, prior to the commencement of operations of OTP's proposed station. Ms. Austin reaffirmed this explicit commitment in her sworn testimony at the hearing (OTP Ex. 8, pp. 3-4).

141. Barbara Roper owns less than 1 percent of the stock and is a director of Comco, Inc., the licensee of six AM and three FM broadcast stations in Alabama and Florida including Station WKIQ(AM), Inverness, Florida. Her husband, Bert Roper is also a director of Comco, Inc., and is the beneficiary of a trust which holds a 3.96 percent stock interest in Comco.

142. Prior to the "B" cut-off date in this proceeding, both Mr. and Mrs. Roper pledged to divest themselves of all interest in Comco, Inc., in the event OTP is the successful applicant here (*HDO*, par. 8; OTP Ex. 3, p. 1). The *HDO* provides that any grant of OTP's application be conditioned on such divestiture by the Ropers (*HDO*, pars. 8 & 21). Mrs. Roper testified that she and her husband will comply with that condition prior to commencement of operation of OTP's proposed television station (OTP Ex. 3, pp. 1-2).

Sunshine Television 27, Inc.

143. Sunshine is a Florida corporation with voting and non-voting stock (Sunshine Ex. 1, p. 1). One thousand shares of voting stock (VS) and 3,000 shares of non-voting stock (NVS) have been authorized (Central Florida Ex. 10, p. 1; MBC Ex. 38, p. 32). As of January 31, 1986, the stock had been issued as follows:

Name	Shares	Equity
Kattie Adams	200 VS	5.0%
Michela English	600 VS	15.0%
Marcia Watts	200 VS	5.0%
P. Chrisman Iribe Martha Holland (Joint Tenants)	800 NVS	20.0%
Petra L. Kahn	800 NVS	20.0%
Donald R. Quartel, Jr.	200 NVS	5.0%
James W. Quartel	100 NVS	2.5%
Jane W. Quartel	100 NVS	2.5%
Harry Walker	1,000 NVS	25.0%

(Sunshine Ex. 4, p. 1).

144. Ms. English, Ms. Watts and Ms. Adams are Sunshine's directors and voting shareholders (*Id.* ; Tr. 4972). Ms. English is Sunshine's President and proposes serving as Sunshine's full-time general manager of its station (Sunshine Ex. 4, p. 1; Sunshine Ex. 2, p. 5). Ms. Watts is Sunshine's Vice President and Secretary and proposes working as the full-time public affairs/public service director at its station (Sunshine Ex. 4, p. 1; Sunshine Ex. 3, p. 2). Ms. Adams is Sunshine's Treasurer and Minority Affairs Director of its proposed station (Sunshine Ex. 4, p. 1; Sunshine Ex. 1, p. 3).

145. As of the "B" cut-off date in this proceeding, Sunshine was still in the process of forming a corporation. *See* Sunshine's May 6, 1985 Amendment to its application, Exhibit 1-A. A Pre-Incorporation Agreement, dated as of May 2, 1985, stated the intention of eleven principals to subscribe for shares in the yet-to-be formed corporation (Reece Associates Ex. 36; Tr. 4839, 4845). The distribution of shares among the principals stated in the Pre-Incorporation Agreement is identical to the distribution set forth in Sunshine's "B" cut-off amendment. The Pre-Incorporation Agreement also stated that the principals desired to organize a corporation with 1,000 shares of voting and 2,000 shares of non-voting stock at1 per share, with voting shareholders voting on the Board of Directors per stirpes (Reece Associates Ex. 36).

146. Four months later, each proposed shareholder was sent Confidential Offering Memorandum dated September 9, 1985 (Reece Associates Ex. 41), along with Subscription Agreements, setting forth the relations between the shareholders and the terms of the Corporation (Tr. 4865; 5090; Sunshine Ex. 8). The Offering Memorandum provided that the maximum amount of a single investment per person was 800 shares; that3 per share shall be tendered

with the Subscription Agreement; that all 4,000 shares (1,000 shares of voting stock and 3,000 shares of non-voting stock) must be subscribed for in order to meet the financial needs of the company; that the subscription offering expired September 30, 1985; and that if all 4,000 shares are not subscribed for by that date all funds paid in subscription would be returned (Reece Associates Ex. 41; Tr. 4944-45). Ms. English and Mr. Rob Quartel testified that they did not feel bound by the Offering Memorandum, and that they looked upon it as purely a risk disclosure document (Tr. 4864; 5443-44).

147. On September 30, 1985, Ms. English signed a Subscription Agreement for 600 shares of voting stock (Reece Associates Ex. 42). On September 28, 1985, Ms. Watts signed a Subscription Agreement for 100 shares of voting stock (Reece Associates Ex. 38). Ms. Watts testified that the amount of 100 shares of voting stock was in error, and that she had intended to subscribe for 200 shares (Tr. 5498-99). She was aware of the error when she signed the Subscription Agreement, but she made no attempt to rectify the error or to subscribe for the correct amount (Tr. 5000). Ms. Adams signed a Subscription Agreement for 100 shares of voting stock on September 17, 1985 (Reece Associates Ex. 37). She also testified that she intended to subscribe for 200 shares, that she had noticed the error in September of 1985, but that she did not correct it on any document (Tr. 5093-94).

148. Also in September, 1985, Petra Kahn, Rob Quartel, James Quartel, Jane Quartel, Harry Walker, and Martha Holland and P. Chrisman Iribe each signed a Subscription Agreement for the number of shares of non-voting stock identified in the Pre-Incorporation Agreement. Ms. Laverty did not sign a Subscription Agreement (Tr. 5101-03). Thus, as of September 30, 1985, 800 shares of voting stock had been subscribed and 2,200 shares of non-voting stock had been subscribed (Tr. 4938, 4942). No action was taken by the subscribers of the voting shares of the corporation to extend the expiration date of the offering, or to return any funds submitted in view of the fact that less than the requisite 4,000 shares were subscribe (Tr. 4938-49; 5101-03; 5508; Reece Associates Ex. 41).

149. The By-laws of Sunshine, adopted November 18, 1985, provide that voting within the Board of Directors is per stirpes based on voting stock ownership (Marlin Ex. 38, Sec. 3.10; Tr. 4987). Thus, Ms. English, with 60 percent of the voting shares, by herself controls the Board of Directors (Tr. 4972-75; 4987-88; 5117). By written consent action of November 19, 1985, Ms. English was elected President of Sunshine, Ms. Adams was elected Treasurer, and Ms. Watts was elected Secretary (Sunshine Ex. 4; Tr. 5359, 5109-10). Also, in November, 1985, the corporate checking account was established at Sun Bank in Orlando (Tr. 4996; 5104, 5118-19).

150. On May 1, 1986, a year after the May 2, 1985 Pre-Incorporation Agreement was executed, the Board of Directors, by written consent action taken without a meeting, resolved that the corporation issue an additional 400 shares of non-voting stock each to Mr. Walker and to Holland and Iribe (Reece Associates Ex. 44; Tr. 4950, 4953; 5322-23; 5510-12). However, by an amendment to the Sunshine application filed February 3, 1986, it was reported that Mr. Walker had purchased 400 additional shares of non-voting stock several months earlier on January 23, 1986, and that Holland and Iribe had purchased an additional 400 shares of non-voting stock on December 27, 1985 (Reece Associates Ex. 46; Tr. 5514-17). *See Order*, FCC 86M-597, released February 18, 1986. While Mr. Walker then had 1,000 shares of non-voting stock, no corporate action was ever taken to change the 800 shares per person maximum specified in the Offering Memorandum (Tr. 4946-48; 5321-23).

151. Ms. English paid1 per share for her 600 shares, as well as a further assessment of2 per share. A share certificate presenting these 600 shares was issued October 14, 1986 (Tr. 4960; 5020). Ms. Adams paid1 per share for 200 shares of voting stock, and a2 per share assessment (Tr. 4943, 4986; 5094-96, 5260, 5297). A share certificate representing these 200 shares was issued October 14, 1986 (Sunshine Ex. 6). Ms. Watts has paid a total of100 to the corporation (Tr. 4943; 5305, 5308; 5507, 5559,5572). No share certificate has been issued to Ms. Watts because she has not paid for her shares in full (Tr. 4960; 5522). Ms. Watts has not paid any of the2 per share assessment (Tr. 4986; 5525; 5558). Ms. English, Ms. Adams and Ms. Watts agreed that Ms. Watts need not pay any more money or purchase an additional 100 shares until the Sunshine application is granted (Tr. 5299, 5308; 5507). Share certificates were issued to the non-voting shareholders on October 14, 1986 (Sunshine Ex. 6; Tr. 5020).

152. No specific corporate steps have been taken to insulate non-voting shareholder Petra Kahn from the activities undertaken by her husband, who is communications counsel for Sunshine (Tr. 4990). Nor have any steps been taken to insulate "non-voting" shareholder Rob Quartel from involvement in the activities undertaken by his wife, Ms. English--the controlling "voting" shareholder of Sunshine (Tr. 5439-41).

153. Ms. Adams and Ms. Watts did not become participants in the applicant until after the "A" cut-off date (Tr. 4813, 5398). Rob Quartel contacted them (Tr. 4834-35), 5068-69, 5405-06, 5484, 5544-45). When they were offered their respective interests in the applicant, each understood that counsel had already been retained, that an application had already been filed, and that a corporation with two classes of stock was to be formed (Tr. 5070-74; 5485-88, 5494, 5568-69. Neither Ms. Watts nor Ms. Adams had any role in selecting counsel nor any role in selecting any of the non-voting shareholders (Tr. 5070-72; 5079-80; 5485, 5494. Ms. Watts, Ms. Adams, and Ms. English first met face-to-face in June or July of 1985 (Tr. 4835; 5084; 5489).

154. Between the time they were contacted by Mr. Quartel and the time they signed the Pre-Incorporation Agreement, neither Adams nor Watts did anything on behalf of or for the applicant (Tr. 5073, 5077; 5494). When Ms. Adams and Ms. Watts signed the Pre-Incorporation Agreement, neither knew anything of the familial relationships between Ms. English and certain proposed non-voting shareholders, or between counsel and certain other non-voting shareholders (Tr. 5082-83; 5490). Neither Ms. Adams nor Ms. Watts had any role in the preparation of the "B" cut-off amendment, which was signed by Ms. English (Tr. 4786; 5073, 5077, 5085).

155. Neither Ms. Adams nor Ms. Watts had any input into the terms of the Confidential Offering Memorandum and Subscription Agreements, nor did they see drafts of either document prior to being presented with the final version, nor did they have either document reviewed by a personal attorney (Tr. 5088-91, 5098, 5297; 5497, 5502, 5552-53).

Integration of Ownership into Management

156. Ms. English is proposed to be integrated into the day-to-day management of the proposed station as the full-time (minimum 40 hours per week) General Manager (Sunshine Ex. 2). As General Manager, she will set overall station policy with respect to programming, will supervise the News Editor, Editorial Director, and the legal affairs of the station, and will represent the station generally in external affairs (Sunshine Ex. 2). The Public Affairs Director and the EEO/Personnel/Minority Affairs Director will report to Ms. English (Tr. 4776).

157. Ms. English is a white female (Sunshine Ex. 2). She maintains her primary residence in Washington, D.C. (Sunshine Ex. 2; Tr. 4759-60). She has resided in Washington, D.C. since 1974 (Tr. 4768). When Ms. English married Rob Quartel in June of 1981, his primary residence was also Washington, D.C. (Tr. 4760). In 1984, Rob Quartel campaigned unsuccessfully for the United States Congress from Orlando (Tr. 4762-63). During the course of the election, in mid-1984 Mr. Quartel and Ms. English purchased a home in Orlando (Tr. 4760). Ms. English claims the Orlando home as a "secondary residence" (Sunshine Ex. 2). Ms. English registered to vote in Orlando in 1984, in order to vote for her husband in his bid for a Congressional seat (Tr. 4767). She voted absentee in Orlando in 1986 elections (Tr. 4768).

158. Ms. Watts has been a resident of Orlando since 1971. She is a Black female and a U.S. citizen (Sunshine Ex. 3).

159. Ms. Watts graduated from Oak Ridge High School in Orlando in 1974. Ms. Watts attended Florida Southern College in Orlando form 1974 to 1976. From 1976 to 1978, she attended college in Indianapolis, Indiana. From 1980 to 1982, she was employed full time at Walgreens in Orlando (*Id.*).

160. Ms. Adams resides at 2500 Lauderdale Court, Orlando, Florida, 32805, and has resided at that address since 1976. She has been a resident of Orlando since 1939. She is a Black female and a U.S. citizen (Sunshine Ex. 1). Ms. Adams earned a Bachelor of Science degree from Florida A&M University in 1961 (*Id.*). From 1962 to 1980, she was a classroom teacher in Orange County (Orlando) schools. Since 1982, she has been Job Internship Coordinator, Center for Continuing Education for Women, Valencia Community College, Orlando. At Valencia, she supervises one employee (*Id.*).

Civic Participation

161. Ms. English claims familiarity with the Orlando area and involvement in Orlando area civic activities as a result of her husband's Congressional campaign (Tr. 4992). All of the meetings she attended and organizations she visited were as a direct result of the campaign, and in the company of her husband (Tr. 4999).

162. In the summer of 1965, while Ms. English was in high school, she participated in the Suffolk, Virginia, City Recreational Program to assist and train handicapped and disadvantaged youth, approximately 35 percent of whom were minority youth (Sunshine Ex. 2). When she was a senior in high school, Ms. English received the Daughters of the American Revolution "Good Citizenship Award." This award was presented to her for her status as President of the Tri-Hi-Y (Sunshine Ex. 2; Tr. 4999-5003). Ms. English was unaware that the D.A.R. has an extensive history of discriminatory treatment towards Black women (Tr. 4999-5003).

163. While in college, Ms. English was a volunteer from 1968 to 1971 in a program where she tutored a single Black child whose parents were on welfare (Sunshine Ex. 2). While employed at the Department of Social Services at Newport News, Virginia, from 1971 to 1973, she was a child welfare worker supervising a caseload of 35 Black children (Sunshine Ex. 2). Also during the time she was employed at the Department of Social Services, she helped organize, from 1972 to 1973, the Newport News chapter of Big Sisters of America and then through that program counseled and assisted young women, 75 percent of whom were Black (Sunshine Ex. 3). Ms. English has not been involved in any further activities of this nature since 1973 (Sunshine Ex. 2).

164. Should Sunshine receive the construction permit, Ms. English, as proposed General Manager, intends to form a Citizen's Advisory Board for the station and to serve as the Chair thereof (Sunshine Ex. 2). This Board is proposed to meet quarterly and to be composed of local resident, including at least one Black, one Hispanic, one Native American, and one Asian (Sunshine Ex. 2).

165. Since 1971, Ms. Watts has been a member of Tangelo Baptist Church in Orlando, where (from 1971 - 1975) she was director of the youth choir. In 1973, she was named Miss Black Teenager of Florida. In 1974, she was first runner-up in the Miss Orlando contests. In 1975, she was a volunteer at Lucerne Hospital in Orlando. In 1975 to 1977, she was a director of the first Miss Black Central Florida Beauty Pageant in Orlando. Since 1983, Ms. Watts has been a member of the board of directors of Operation L.I.F.E., Inc., an Orlando service group and, in 1983 to 1984 was active in its annual workshop in race relations. Ms. Watts was a charter member and since 1984 has been active in Project H.E.L.P., an Orlando civic group. Since 1984, Ms. Watts has been a volunteer for Second Chance (formerly Uncle Chip's Home of Hope) in Orlando. She was a co-founder and since 1984 has been a member of Students United Globally Against Racism. Since 1984, Ms. Watts has been a volunteer at Americana Nursing Home in Orlando. Since 1985, she has been a member of the Lake Silver Elementary PTA in Orlando. Since January 1986, she has been a volunteer in the BETA program in Orlando for unwed mothers (Sunshine Ex. 3).

166. Since 1950, Ms. Adams has been a member of the Shiloh Baptist Church and has been Chairman of the church's Education Committee since 1982. Since 1975, she has been a member of the board of directors of People Rights Organization of Orlando. Since 1975, she has been a member of Silhouettes, and was its president from 1977 to 1978. Since 1976, she has been a member of the Orange County Black Republican Club. From 1977 to 1983, she was vice-chairman of the Human Relations Review Board of Orlando. Since 1980, she has been an elected member of the Orange County School Board, serving as chairman in 1982 and as vice-chairman in 1980, 1981 and 1983. Since 1981, she has been a member of the Orlando Chapter of Delta Tau Kappa. Since 1981, she has been a member of the Orlando Chapter of Alpha Kappa Alpha sorority. Since 1981, she has been a member of the Minority Advisory Board of the University of Central Florida at Orlando. From 1981 to 1983, she was a member of the Advisory Board for the John Young Science Center

of Orlando. in 1981, she received the Educational Leadership Award from Phi Delta Kappa, an award from the Orlando Chapter of Alpha Phi Alpha for Outstanding Contributions to the Field of Education. Since 1982, she has been a member of the Education Advisory Committee to U.S. Senator Paula Hawkins of Florida. In 1982, she received an award from the Orlando Chapter of Alpha Kappa for Outstanding Leadership in Community Service, and the Devoted Efforts to the Community Award from the Orlando Chapter of Kappa Alpha Psi. Since 1983, she has been a member of the Winter Park Women's Republican Club, the HRS District Advisory Committee and the Institute of Education Advisory Board for the University of North Florida. Since 1983, she has been co-chairperson of the Orlando area United Negro College Fund campaign. In 1984, she was appointed by the Governor of Florida State Committee to Study Black Education in Florida, a committee on which she is still active. Since 1985, she has been a member of the Advisory Committee of We Care, an Orlando civic group (Sunshine Ex. 1).

Broadcast Experience

167. Ms. English has no broadcast experience and has never worked at a broadcast station (Tr. 4772). Ms. English received a Bachelor of Arts degree from Sweet Briar College in 1976 (Sunshine Ex. 2). She received a Master of Public and Private Management degree from Yale University School of Organization and Management in 1979 (*Id.*). From 1971 to 1973, she was employed by the Newport News, Virginia, Department of Social Services (Sunshine Ex. 2). From 1974 to 1977 she was employed by the Federal Energy Administration (Sunshine Ex. 2). From 1979 to 1985, Ms. English was employed in Washington, D.C., by McKinnsy & Company, Inc., an international consulting firm (*Id.* ; Tr. 4773). Her work occasionally brought her in contact with print publications and on one occasion she was involved with a pay cable project (*Id.*). Ms. English never, however, worked directly in nor focused on broadcasting while at McKinnsy (Tr. 4773). In January of 1986, Ms. English began her current employment as Vice President, Corporate Planning and Business Development, for Marriott Corporation in Bethesda, Maryland (Sunshine Ex. 2; Tr. 4769). Ms. English has not informed Marriott Corporation of her involvement in or commitments to the Sunshine application (Tr. 4771).

168. Ms. Watts intends to be integrated into the day-to-day management of the proposed station as the full-time Public Affairs and Public Service Director. She proposes to determine the station's public affairs policy and supervise the production of the station's public affairs programming. She proposes to develop and maintain contacts with community leaders and groups in order to establish the station's policies with respect to serving the needs of community groups. She proposes to supervise the scheduling and presentation of public service announcements (Sunshine Ex. 3).

169. Ms. Adams intends to be integrated into the day-to-day management of the proposed station as the full-time EEO and Personnel Director and Minority Affairs Director. As EEO and Personnel Director, she proposes to manage the station's employment program. She proposes to make and administer employment policy and supervise the personnel department. As Minority Affairs Director, she proposes to establish station policies with respect to the station's commitment to meet the special needs and problems of minority viewers. In managing Minority Affairs, she proposes to supervise a special assistant who will be a liaison to the Hispanic community (Sunshine Ex. 1).

Diversification

170. Neither Sunshine nor any of its stockholders has any cognizable interest in a medium of mass communications. Michela English, Chrisman Iribe. Martha Holland, Petra Kahn, James W. Quartel, Jane W. Quartel and Harry Walker own stock in widely traded public companies and investment funds, some of which may control media of mass communications. In no instance, however, does any stockholder own more than 1 percent of the stock in any of these companies (Sunshine Ex. 5).

Reece Associates, Limited

171. Reece Associates is a limited partnership formed under the laws of the State of Florida (Reece Associates Ex. 1). The limited partnership is composed of two general partners, Marsha D. M. Reece and RA Communications, Inc., and two limited partners, the Debra Gail Herpe Schwartz Irrevocable Trust and The Lori Beth Herpe Sinns Irrevocable Trust (*Id.*). General Partner Marsha Reece, holds a 1 percent general partnership interest in Reece Associates, is entitled to one percent of the partnership's profits, and is responsible for 1 percent of any of the partnership's losses (*Id.*). The other General Partner, RA Communications, Inc. (RAC), holds a 24 percent general partnership interest in Reece Associates, is entitled to 24 percent of the partnership's profits, and is responsible for 24 percent of any of the partnership's losses (*Id.*).

172. RAC is a corporation formed under the laws of the State of Florida (Reece Associates Ex. 1). The corporation has issued 1,000 shares of voting common stock to the officers, directors and shareholder of RAC as follows (*Id.*):

Name	Official Position	Shares	Percent
Marsha D.M. Reece	President, Director	950(VS)	95 percent
Rudolph Reece, Jr.	Vice President, Secretary, Treasurer, Director	50(VS)	5 percent

173. The limited partners hold a 75 percent limited partnership interest in Reece Associates, are entitled to 75 percent of the partnership's profits, and are responsible for 75 percent of any of the partnership's losses (*Id.*). The limited Partners are Trusts (Reece Associates Ex. 1). The Grantor of the Debra Gail Herpe Schwartz Irrevocable Trust is Debra Gail Herpe Schwartz, of Nashville, Tennessee (Reece Associates Ex. 1, Attach. 2; Tr. 2356). The Trustee thereof is Lawrence Levinson, of Morrisville, Pennsylvania (Reece Associates Ex. 1, Attach. 2; Tr. 2356). The Grantor of the Lori Beth Herpe Sinns Irrevocable Trust is Lori Beth Herpe Sinns, of Seminole County, Florida (Reece Associates Ex. 1, Attach. 3). The Trustee thereof is Lawrence Levinson, of Morrisville, Pennsylvania (Reece Associates Ex. 1, Attach. 3; Tr. 2356).

174. Marsha Reece, the Managing General Partner, and RAC, the Associate General Partner (of which Marsha Reece is the majority stockholder), share the exclusive

authority to control and manage the activities of Reece Associates (Reece Associates Ex. 1; Reece Associates Ex. 1, Attach. 1, Sections 2.01, 1.02). The limited partners have no authority to participate in the control or management of the business of the partnership (Reece Associates Ex. 1; Reece Associates Ex. 1, Attach. 1, Section 3.02). Neither the limited partnership, nor the Trustee under the Trust Agreements, will be involved in the management or operation of the proposed television station (*Id.*).

175. When the Reece Associates application was filed originally in March, 1985, the applicant was Reece Associates Communications, as a corporation, with Marsha Reece holding 51 percent of the outstanding shares and Rudolph Reece 49 percent (Tr. 1684; 1880).

176. On May 6, 1985 (the "B" cut-off in this proceeding) an amendment to the Reece Associates application was filed with the FCC which, *inter alia*, changed the name of applicant, changed the form of the applicant from a corporation to a limited partnership, notified the FCC of the change of RAC stock ownership (*i. e.*, Marsha Reece from 51 percent to 95 percent and Rudolph Reece from 49 percent to 5 percent, and certified Reece Associates' financial qualifications (Central Florida Ex. 3). Rudolph Reece did not receive any consideration for relinquishing this 44 percent interest in RAC (Tr. 1689).

177. The purpose of this change in the stock ownership in RAC, increasing Ms. Reece's share from 51 percent to 95 percent and decreasing Mr. Reece's share form 49 percent to 5 percent, was to attempt to make the Reece Associates application appear stronger in comparison to the other applications in this proceeding (Tr. 1689).

178. The Reeces have worked as husband and wife team from the time RAC was formed (Tr. 1935-36). Ms. Reece initially took the lead in the Reeces' efforts to organize and prepare an application, and both Marsha and Rudy Reece were actively involved in all aspects of preparation of the application (Tr. 1693-1696, 1831-1832; 1871-1882, 1935). Marsha Reece obtained the rights for the original transmitter site, and both Marsha Reece and Rudy Reece were involved in obtaining the current transmitter site (Tr. 1873-1876, 1947-1948; Tr. 1693-1695). Both Marsha Reece and Rudy Reece have communicated and corresponded with the consulting engineering (Tr. 1695; Tr. 1878, 1948-1949). Pursuant to Ms. Reece's instruction and authorization, Mr. Reece obtained an equipment proposal from Harris Company and managed the corporate bills (Tr. 1696, 1699-1700, 1755-1756, 1804, 1817-1818; 1916). Both Marsha and Rudy Reece have communicated with local counsel and communications counsel, and both were involved in the negotiation and preparation of the limited partnership agreement (Tr. 1714, 1716, 1720-1722, 1738, 1740-1741, 1753-1754, 1778-1780; Tr. 1871, 1891, 1893, 1898-1901, 1917-1920, 1946-1947, 1951-1953). Both Marsha and Rudy Reece are authorized to sign checks for the partnership (Tr. 1755-1756, 1804).

179. Prior to the "B" cut-off date, the Reeces determined to accept as limited partners the Lori Beth Herpe Sinns Irrevocable Trust and the Debra Gail Herpe Schwartz Irrevocable Trust (Trust 1722, 1727-1736; 1905-1906, 1909-1910). The trust documents, however, were not completed by May 6, 1985 (Reece Associates Ex. 1, Attachs. 2 & 3). Therefore, on May 6, 1985, the Reece Associates Limited Agreement of Limited Partnership was entered into with Mr. Reece "standing-in," in good faith, during the few week transition period, as the limited partner of Reece Associates until the Trusts could be formed and finalized (Tr. 1723-1726, 1773-1775; Tr. 1885-1888, 1909-1910, 1924-1925). On August 1, 1985, the Reece Associates Limited Amended and Restated Limited Partnership Agreement was entered into (Reece Associates Ex. 1, Attach. 1). There was no change in the management or control of Reece Associates with the Amended and Restated Limited Partnership Agreement (Reece Associates Ex. 1, Attach. 1; Central Florida Ex. 2). The General Partners, Marsha Reece and RAC, remained in sole and overall control of the management and control of the business and affairs of the partnership (Reece Associates Ex. 1, Attach. 1, Sec. 2.01; Central Florida Ex. 2, Sec. 2.01).

180. Both Rudolph and Marsha Reece testified that Rudolph Reece was never intended to be a permanent limited partner (Tr. 1925, 1710, 1725-26). Rudolph Reece was not intended as a permanent limited partner because the Reeces together did not have funds adequate to prosecute the application:

> Q. But the reason you knew that Rudy would not stay a limited partner was because you and Rudy together didn't have the funds to prosecute this application by yourself.
>
> A. Well, that's true.
>
> Q. And you and Rudy didn't have the means to construct and operate the station; correct?
>
> A. That's why we wanted a limited; yes, sir.

Integration of Ownership into Management

181. Reece Associates proposes to integrate into the management of its television station Marsha Reece and Rudolph Reece (Reece Associates Ex. 1, 3). Marsha Reece, a Black female (Reece Associates Ex. 4), is the Managing General Partner of Reece Associates and the controlling shareholder of RAC, which the Associate General Partner of Reece Associates (Reece Associates Ex. 1). Rudolph Reece, a Black male (Reece Associates Ex. 5), is the remaining shareholder of RAC (Reece Associates Ex. 1, 3).

182. Marsha Reece will serve as news director and director of public affairs programming, working at the station on a full-time basis of at least 40 hours per week. As news director, Ms. Reece will be responsible for the station's news policies and programming will supervise the news staff and the production of this programming. As public affairs director, Ms. Reece will be responsible for determining the problems, needs and interests of the community and supervising the production of responsive public affairs programming (Reece Associates Ex. 2).

183. Rudolph Reece will serve as station manager and business manager of the station, working at the station on a full-time basis of at least 40 hours per week. Mr. Reece will have overall responsibility for the day-to-day management of the marketing, public relations and personal departments of the station. As business manager, Mr. Reece will have management responsibility for all business activities, including implementation of billing, accounting, purchasing, station maintenance and personnel policies. With respect to the station's equal employment opportunity program, Mr. Reece will have day-to-day authority to

oversee recruitment, hiring and employee promotion practices of all departments of the station. In this respect, Mr. Reece will advise and assist Marsha Reece.

Local Residence

184. Marsha Reece currently resides at 8024 Gillette Court, which is in Orange County, but located outside the city limits of Orlando (Tr. 1680- 81). She has lived at other addresses within the city grade coverage contour of Reece Associates' proposed television station. If Reece Associates is successful in this proceeding and receives the construction permit, she intends to maintain her current residence outside Orlando (Reece Associates Ex. 4).

185. Rudolph Reece currently resides at 8024 Gillette Court, which is outside the city limits of Orlando (Reece Associates Ex. 5). Each of Reece's residences over the past eight years is within the city grade coverage contour of Reece Associates' proposed television station (*Id.*). If Reece Associates is successful in this proceeding and receives the construction permit, he intends to maintain his current residence outside Orlando's city limits (*Id.*).

Civic Participation

186. Since 1982, Marsha Reece has been a member of the Links, Inc., a national service organization comprised predominantly of Black women. She has been a member of the By-laws Committee, the Publicity Committee, the International Trends and Services Committee, and the Social committee of the local Orlando chapter of the Links, Inc. (Reece Associates Ex. 4).

187. Since 1983, Marsha Reece has been a member of the Orange County Chapter of Delta Sigma Theta Sorority. Delta Sigma Theta is a civic and social organization comprised predominantly of Black women. Since 1985, Reece Associates has been a member of the Food and Drug Administration Health Fraud Task Force. This groups promotes awareness of health fraud in the community. She has been involved in a number of public workshops on behalf of the Health Fraud Task Force. Ms. Reece has done two stories for her employer, Channel 9, concerning the Food and Drug Administration, and this activity has been related to her work at times in the past (Tr. 1682).

188. In 1983, Marsha Reece helped found the Central Florida Association of Black Journalists and Broadcasters. In this organization, she has worked to monitor affirmative action programs and to advocate the hiring of Black professionals. She has talked to Black students about careers in the media, supervised meetings with predominantly Black organizations on how to effectively use the media, and has moderated workshops on writing skills. She has also served on the Banquet Committee for the Association. Ms. Reece's employer has in the past paid her dues for this organization (Tr. 1681-82).

189. Since 1984, Ms. Reece has been a member of the Orlando Policy Minority Recruitment Task Force. The purpose of this organization is to improve the image of the Orlando Policy Department and to improve the number of minorities on the police force. While on the task force, she has reviewed application processes and recommended changes to implement the purpose of the Task Force. She has also provided input on how the police department can improve community relations with the Black community (Reece Associates Ex. 4). However, the Orlando Police Minority Task Force has not had a meeting since 1985, and Ms. Reece cannot recall any meeting in 1985 that she attended (Tr. 1681). In addition to these activities, Ms. Reece has voluntarily appeared as the featured speaker at many charitable benefit events over the last several years in Orlando, and voluntarily participated in dozens of career fairs for elementary, junior high, and high schools in the Orlando area (Reece Associates Ex. 4).

190. Since May 1980, Mr. Reece has been a citizen representative on the Orlando Urban Task Force. This citizen group reviews plans for the growth of the city of Orlando and makes recommendations accordingly. From 1979 to 1984, he was a founding member and a member of the Board of Directors of the Central Florida Senior Chapter of the American Marketing Association (AMA). Mr. Reece has participated as a speaker in addressing groups and sponsoring seminars concerning marketing for the AMA. In addition, he was responsible for starting the newsletter for the AMA in Orlando. Reece was a member of the Metropolitan Development Corporation of Orlando. In 1979, he was on the Board of Directors of MEDCO. MEDCO protests historic sites of particular significance to Orlando's Black community. Mr. Reece's other civic and community involvement includes the Orlando Metropolitan Urban League, Affirmative Action Advisory Committee of the Florida Technological University (now called the University of Central Florida), and service on the Board of Directors of the Minority Education Development Involvement Association (Reece Associates Ex. 5).

Broadcast Experience

191. Marsha Reece received a degree in mass communications from the University of Evansville in Evansville, Indiana. Ms. Reece's first position in television was with WEHT-TV, in Evansville, Illinois. She started working there in 1975. She worked over 40 hours per week, with her responsibilities divided between general assignment reporting and photographer. From 1976 to 1977, she served as the weekend co-anchor and a news producer for WEHT-TV. In 1977, she was promoted to the position of a news producer and was the newsroom manager for WEHT-TV. During her tenure at WEHT-TV, from 1975 to 1978, Ms. Reece also served as public affairs hostess. This entailed interviewing local residents on issues concerning the community for the "Everyday People" talk show. She left WEHT-TV in 1978 (Reece Associates Ex. 4).

192. From 1978 to 1980, Ms. Reece was a general assignment reporter for WFTV in Orlando. In 1980, she was promoted to weekend anchor for WFTV. She also continued to serve as a news reporter. In July 1981, Ms. Reece was promoted to her current position of morning anchor at WFTV. Her responsibilities include anchoring, writing news stories, supervising editing and shooting, and producing. She is also the lifestyle reporter for WFTV. As lifestyle reporter, she produces, writes and narrates WFTV's lifestyle segment. Lifestyle consists of two to three five-minute program segments per week, which cover the lifestyles of central Floridians (*Id.*). In addition, Ms. Reece is the substitute anchor for WFTV's noon news program (*Id.*). If Reece Associates receives a construction permit for Channel 27 in Orlando, she will resign from her employment at WFTV (Reece Associates Ex. 3).

193. Mr. Reece received a degree in marketing from Howard University in Washington, D.C. in May 1977. Since then he has been employed in marketing. Some of that work has involved radio and television (Reece Asso-

ciates Ex. 5). Mr. Reece is currently the President of Reece Associates. His responsibilities involve advising clients on developing and improving their overall marketing plans. With Reece & Associates, he has produced and directed several programs for television. In the latter part of 1985, he produced and directed six two-minutes documentaries for the United Negro College Fund which were aired on Channel 35, WOFL-TV, in Orlando. He also produced a 30-minute documentary for the Charles J. Givens Foundation, which was broadcast on various television stations throughout the country. He was involved in the marketing of the 1985 Florida Citrus Bowl and Gator Bowl parades, and was the associate producer for the televised portions of both (*Id.*). Mr. Reece was previously involved in marketing efforts for other entities, including Linders Group, Inc. and Walt Disney World (*Id.*).

194. It is Mr. Reece's stated intention to terminate all business activities of Reece & Associates if Reece Associates receives the construction permit for Channel 27 in Orlando (Reece Associates Ex. 3).

Diversification of Media Ownership

195. Neither Reece Associates, nor its general partners, RAC and Marsha Reece, nor any of the shareholders of RAC presently holds any ownership interest in any license of permittee of any television or radio station, in any cable television system, in any daily newspaper, or in any other media or mass communications, with the exception of their interests in Reece Associates (Reece Associates Ex. 2).

196. The Debra Gail Herpe Schwartz Irrevocable Trust and the Lori Beth Herpe Sinns Irrevocable Trust have no ownership interest in any licensee or permittee of any television or radio station in any cable television system, in any daily newspaper, or in any other media or mass communications, with the exception of the trusts' interests in Reece Associates (*Id.*).

197. Robert Herpe, however, is the father of Debra Gail Herpe Schwartz and of Lorie Beth Herpe Sinns. Herpe is also the maker and guarantor of all payments into the Herpe family trust, and has agreed to guarantee the provision of all funds needed for the construction and operation of Reece's station, through the Herpe trust (Reece Associates Ex. 3; Tr. 2361).

198. Herpe has broadcasting interests in Salt Lake City, Utah; Nashville, Tennessee; Phoenix, Arizona; and Kansas City, Kansas-Missouri (Tr. 2385). Herpe's media interests provide broadcast services to several million persons. Salt Lake City, Utah, has 1,043,200 persons within its radio market; Nashville, Tennessee has 1,465,000 persons within its radio market; Phoenix, Arizona has 1,743,400 persons within its radio market; and Kansas City has *Broadcasting / Cablecasting Yearbook)* (official notice taken). Collectively, the total population served by these broadcast facilities in which Herpe has an interest exceeds 5 million people. Nashville, Tennessee, is 688 miles from Orlando, Florida; Kansas City is 1,245 miles from Orlando; Phoenix, Arizona, in 2,083 miles from Orlando; and Salt Lake City, Utah, is 2,327 miles from Orlando (Rand McNally Road Atlas).

Specialized Programming

199. Reece Associates proposes to schedule non-entertainment programming which it alleges will meet the unique informational, cultural, news and issue-oriented needs of the proposed service area's Black population (Reece Associates Ex. 27). In particular, Reece Associates proposes to broadcast half-hour public affairs programs three times each week during the early evenings (Reece Associates Ex. 27). These public/community affairs programs will be directed to local Black political, business, governmental, law enforcement, health, and educational concerns (*Id.*). Reece Associates proposes to broadcast half-hour informational programs three times each week, during the weekday mornings (Reece Associates Ex. 27). These self-help-type programs will emphasize minority employment availabilities, affordable housing prospects, educational improvement opportunities and further serve as a consumer complaint forum (Reece Associates 27). With these three hours of public affairs and informational type programs alone, Reece Associates' programming would double the amount of air time currently devoted to local Black-oriented television programming in the Orlando markets (Reece Associates Exs. 26, 27).

200. Reece Associates will broadcast 30 minutes of primarily local news each weekday which will have its emphasis on news relating to the Black community. These newscasts will be five minutes long and will be broadcast twice each morning, afternoon, and evening (Reece Associates 27). There are no local Black-oriented newscasts currently broadcast on any local television station (Reece Associates 26).

201. Reece Associates will also broadcast one half-hour cultural program each week on a weekday evening, which program will feature Black artists, authors, and entertainers, particularly those residing or appearing in the service area (Reece Associates Ex. 27). Finally, Reece Associates will broadcast a one hour religious program each Sunday morning (*Id.*). Reece Associates will invite Black congregations to broadcast Sunday morning services and sermons (*Id.*). This type of local Black religious programming is intended to fulfill the needs of the aged, ill, and homebound for the distinct Black religious experience.

202. It is alleged Reece Associates' proposed seven hours of local Black-oriented non-entertainment programming would more than triple the amount of local Black-oriented television programming currently broadcast in the Orlando market (Reece Associates Ex. 26).

203. Six of the seven television broadcast stations whose Grade B contours cover Orlando, each carry between 30 to 60 minutes of Black-oriented programming each week, for a total of seven hours of programming (Reece Associates Ex. 26). Six of these seven hours are broadcast on the weekend (*Id.*). Six of Reece Associates' seven hours of proposed programming will be broadcast during the week (Reece Associates Ex. 27).

204. The proposed specialized programming is to meet the following identified alleged needs of the Black community in Orlando City and area, to wit, employment (Reece Associates Exs. 22, 28, 29): housing (Reece Associates Exs. 9, 11, 28, 29); lack of telephones and transportation (Reece Associates Ex. 10); education (Reece Associates Exs. 7, 28, 29); greater income (Reece Associates Exs. 8, 24, 28); and day care (Reece Associates Exs. 6, 15, 28).

205. Other special needs identified by the community leaders surveyed included: drug abuse, teen pregnancy, entertainment, extracurricular activities for children, cultural activities, crime, expenditures of tax dollars, community economic development, enfranchisement and political involvement, and lack of business ownership (Reece Asso-

ciates Ex. 28). Special needs identified in the survey of the general public, not already mentioned, include: police protection, drugs, discrimination and equal employment opportunity, utility rates, teen pregnancy, city services and recreational facilities, business ownership, programs for children and teens, and a lack of cohesiveness or sense of community (Reece Associates Ex. 29). Of the general public surveyed, 90 percent stated that television programming directed to the Black community to meet these identifiable needs, interests and problems was needed and that such programming would be helpful to all residents of the Orlando area (Reece Associates Ex. 29). Of the 25 community leaders surveyed, all but one stated that TV programming directed to the identifiable needs, interests, and problems of the Black community was needed, and that such programming would be beneficial to all Orlando area residents (Reece Associates Ex. 28).

206. To meet its burden of proof on demonstrating the need for the specialized programming, Reece Associates relies, in part, on various U.S. Census data (Reece Associates Exs. 6-25). Reece Associates also submitted a "survey" consisting of interviews conducted between January 23 and January 29, 1986 of certain television stations and cable systems in which the stations and cable systems were requested to describe current programs "specifically designed for the Black audience." This survey does not include any programming available on radio stations, nor is there any indication that the survey includes all television stations and cable systems in Reece Associates' proposed service area (*Id.*). The survey does indicate that at least one television station surveyed, WTGL, broadcasts exclusively religious programming specifically designed for a Black audience (Reece Associates Ex. 26, pp. 3-4). In addition, at least four of the cable television systems surveyed carry the Christian Broadcast Network, CBN (Reece Associates Ex. 26, pp. 17, 20, 21 and 24). Further, at least two of the cable systems have allocated channels for public access/community programming, Evans Cablevision, Channel 35 (Reece Ex. 26, p. 17) and Cablevision of Central Florida, Orlando Channel 1 (Reece Associates Ex. 26, p. 24).

207. Reece Associates also submitted a "survey" consisting of interviews of several individuals characterized by Reece Associates as "community leaders" (Reece Associates Ex. 28). The record shows a total of 21 such interviews, nine of which were conducted in August, 1985 and twelve of them in January, 1986 (*Id.*). There is no indication of how the specific individuals were selected for the survey (*Id.*).

208. Reece Associates also submitted a "survey" consisting of telephone interviews of approximately 80 members of the "the general public," conducted between January 27 and 29, 1986 (Reece Associates Ex. 29). There is no indication of the basis upon which either the size of the survey sample was chosen or the method of selecting individuals was determined other than the fact that an attempt was made to limit the survey "as closely as possible" to Blacks (*Id.*) The exhibit is also silent on any steps taken to ascertain whether any statistically valid conclusions could be drawn from the survey (*Id.*).

209. None of the persons interviewed either as "community leaders" or the "general public" expressed a need for Black-oriented cultural or religious programs (Reece Associates Exs. 28, 29).

210. Ana Gonzalez, one of the principals of Magic City and former employee of WOFL, Channel 35 in Orlando testified that she had been assistant producer at WOFL of two programs, "Impact" which aired for a half-hour both Saturdays and Sundays, and "Good Day" which aired for a half-hour each weekday (Magic City Ex. 4, p. 3). Ms. Gonzalez indicated that "Impact" focused mainly on the Black community affairs program that, while not designed specifically for the Black community, did address issues relating to Blacks and other minorities (Tr. 2020; 2044-2045; 2047-2051). Both of these programs are still being aired on WOFL (Tr. 2043).

Magic City Broadcasting, Inc.

211. Magic City is a corporation organized and existing under the laws of the State of Florida (Magic City Ex. 1). The ownership of Magic City's voting common stock is as follows:

	Ownership Interest Held	
Name	**No. Shares**	**Percentage**
Fausto Sanchez	10	50 percent
Ernesto Gonzalez-Chavez	7	35 percent
Ana Gonzalez	2	10 percent
Shirley Boykin	1	5 percent

(*Id.*).

212. The officers and directors of Magic City are as follows:

Name	Officer Positions Held	Director
Fausto Sanchez	President	Yes
Ernesto Gonzalez-Chavez	Chairman of the Board and Secretary	Yes
Ana Gonzalez	Vice President	Yes
Shirley Boykin	Treasurer	Yes

(*Id.*).

213. The By-Laws of Magic City, adopted before the "B" cut-off date, provide that if a shareholders' vote results in a tie vote, the single holder of 50 percent of the voting shares (Fausto Sanchez) shall be entitled to cast the deciding vote, and further provide that in the event that the directors reach a deadlock vote, then the President of the corporation (Fausto Sanchez) shall be entitled to cast the deciding vote (*Id.*, Tr. 2115). In addition to the 20 authorized voting shares, the corporation has authorized 30 shares of non-voting stock, 20 shares of which are subscribed for by Fausto Sanchez. There are no other non-voting stockholders (Magic City Ex. 1).

214. Magic City proposes to integrate all of its principals into the day-to-day operation and management of its proposed station on a full-time basis of at least 40 hours per week for each principal (Magic City Ex. 2-5).

215. Fausto Sanchez, an Hispanic of Cuban origin, lives in Key Biscayne, Florida (Magic City Ex. 2). Mr. Sanchez was the progenitor of this application. Mr. Sanchez filed the application for Channel 27 as an individual on March 20, 1985, with the intention of bringing in other principals who were Orlando area residents involved in civic activities (Tr. 2144, 2156-57). Although stock certificates have not as yet been issued, all of the shareholders executed stock subscription agreements prior to the "B" cut-off date

(Tr. 2150). Magic City intends to issue stock certificates when the subscription agreements are met in full, and the stock is fully paid and non-assessable (Tr. 2028).

Integration of Ownership into Management

216. Mr. Sanchez is proposed to serve full time as General Manager of the proposed station (Magic City Ex. 2). As such, he will have responsibility for the day-to-day supervision over all aspects of the management and operation of the station, supervisory authority over all departments of the station, including the news, public affairs, programming, sales, engineering and business departments, and general responsibility for the station's annual budget and capital expenditures (Magic City Ex. 2).

217. Ernesto Gonzalez-Chavez, an Hispanic of Cuban origin, is proposed to serve full time (a minimum of 40 hours per week) as Programming and News Director of the proposed station (Magic City Ex. 3). As such, he is proposed to supervise the station's programming and news departments, including program production and acquisition (*Id.*). Mr. Gonzalez-Chavez will be responsible for making programming recommendations to the General Manager, and for supervision of all employees working directly in programming and news functions at the station (*Id.*). Mr. Sanchez, however, has overall authority for the programming and news departments (Magic City Ex. 2).

218. Mr. Gonzalez-Chavez is President, Director and 90 percent owner of Architects in Partnership East, Inc., an architectural business he helped found in about 1975 (Tr. 1979-81). His ownership interest is to be reduced to 80 percent so that two of his three technical people will each own 10 percent equity in the firm (Tr. 1980). He no longer solicits business but primarily serves old clients (Tr. 1982). The time he spends on architectural business is flexible (Tr. 1980-1981). Mr. Gonzalez-Chavez also owns a small construction company (Tr. 1918). He builds only when he finds a suitable building lot (Tr. 1918-1919). He has no permanent employees (Tr. 1919), but has a partner (Tr. 1974). Mr. Gonzalez-Chavez's involvement in construction is intermittent (Tr. 1977). Overall, Mr. Gonzalez-Chavez works at least 40 hours per week (Tr. 1980), but in his words he leaves the house early in the morning and returns late at night (Tr. 1981).

219. Ana Gonzalez, a female Hispanic of Cuban descent, is proposed to serve full time as Director of Personnel and Public Affairs for the proposed station (Magic City Ex. 4). AS such, she is to be responsible for the supervision of station hiring practices and employment policies, and for the station's public and community affairs, public service announcements, and community-related programs (Magic City Ex. 4). Mr. Sanchez, however, will have supervisory authority over the public affairs department (Magic City Ex. 2).

220. Shirley Jean Boykin, a Black female, is proposed to serve full time as Director of Business Affairs of the proposed station (Magic City Ex. 5). As such, she will supervise the station's business and sales department, employment and supervise all sales personnel, be responsible for local regional and national sales, and will supervise all station billings (Magic City Ex. 5). Mr. Sanchez, however, will have authority over the sales and business departments and general responsibility for the budget (Magic City Ex. 2).

Local Residence

221. Mr. Sanchez currently resides in Key Biscayne, Florida (Magic City Ex. 2; Tr. 2135). He intends to move to and reside in Orlando if Magic City is granted a construction permit (Magic City Ex. 2).

222. Mr. Gonzalez-Chavez has lived in Winter Park, Florida for the past 15 years (Magic City Ex. 3). Winter Park is contiguous to Orlando and within the city grade contour of Magic City's proposed station (*Id.*). Mr. Gonzalez-Chavez intends to move to and reside in Orlando if Magic City is granted a construction permit (*Id.*).

223. Ms. Gonzalez was born in 1961 and raised in Sanford, Florida (Magic City Ex. 4). Ms. Gonzales moved to Longwood in 1980, when she was approximately 20 years old (*Id.*). Sanford is located 15 miles from Orlando (Tr. 2024). Longwood is contiguous to Orlando and within the city grade contour of Magic City's proposed station (Magic City Ex. 4). Ms. Gonzalez intends to move to and reside in Orlando if Magic City is granted construction permit (*Id.*).

224. Ms. Boykin has lived in the Orlando metropolitan area for the past 12 years (Magic City Ex. 5). In 1974, she resided in Winter Park for approximately six months (*Id.*). From 1984 to 1986, Ms. Boykin resided in Maitland, Florida (*Id.*). In 1986, she moved to Orlando, and she currently resides there (Tr. 2106-097). Both Winter Park and Maitland are with in the city grade contour of Magic City's proposed station (Magic City Ex. 5). Ms. Boykin will continue to reside in Orlando if Magic City is granted a construction permit. (*Id.*).

Civic Participation

225. Mr. Gonzalez-Chavez was a co-founder of the Orlando Area Latin Chamber of Commerce approximately six years ago (Magic City Ex. 3). At one point he served as president and is currently as active participant in the organization (*Id.*). He is also a member of the City of Orlando Hispanic Advisory Committee, and of the Orange County Adult Education Advisory Board for the past two years (*Id.*). He has also been a member of the State of Florida Region 19 Council, which is responsible for vocational and adult education and programming for Orange and Osceola counties (*Id.*). *Mr. Gonzalez-Chavez is a Chairman of the City of Orlando Minority Certification Board and was also a member of the Board's predecessor, the Minority Certification Committee (Magic City Ex. 3; Tr. 1964). He was a co-founder of the Latin Chamber of Commerce Education Trust Fund, and a board member for the past year and onehalf Id.).*

226. Mr. Gonzalez-Chavez has also been an advisor to Homes in Partnership, a self-help housing program (Magic City Ex. 3). In 1980, Mr. Gonzalez-Chavez was a co-founder of Central Florida Refugee Assistance, Inc., an organization that also assisted refugees in locating work in Orlando (*Id.*). He has also served as a director for this organization. (*Id.*). Mr. Gonzalez-Chavez has also sponsored the Winter Park Soccer Club (*Id.*). He is a member of the Bishop Moore PTA and the St. Margaret Mary PTA and a past member of the Aloma Elementary PTA (*Id.*).

227. Between 1982 and 1984, Ms. Gonzalez was involved in the National Multiple Sclerosis Society (Central Florida Chapter), the Florida Symphony, and Daytona Beach Community College (Magic City Ex. 4). While at WOFL(TV), Ms. Gonzalez assisted Daytona Beach Community College in getting advertising spots on the air (Tr. 2019).

228. Since 1977, Ms. Boykin has participated in the United Way of Orange County (*Id.*). She served for seven years on the Budget Review Committee, three years on the Board of Directors, and has recently been appointed to the Executive Committee of this organization (*Id.*). Ms. Boykin has served with the Orlando Area Chamber of Commerce since 1977 on various committees, including the Human Relations Committee and the Small Business and International Trade Committee (*Id.*). In addition, in 1984 Ms. Boykin was appointed by the Governor of Florida to the Region 19 Coordinating Council for Vocational Education, Adult General Education and Community Instructional Services (*Id.*). Ms. Boykin was appointed by the mayor of the City of Orlando to Orlando's Minority Business Ordinance Task Force, where she served as Chairperson of the Certification Committee (later known as the Minority Certification Board) from 1983 to 1975 (*Id.* ; Tr. 2107).

Broadcast Experience

229. From October 1980 to 1982, Mr. Sanchez was associate director, newswriter and an anchor for Spanish International Network in Los Angeles, California (Magic City Ex. 2). Mr. Sanchez directed on-air programming, assisted in the production of "Mundo Latino," a Spanish-language television program, and directed newscasts (*Id.*). Mr. Sanchez later wrote news stories, put together newscasts, and served as on-air talent during weekend newscasts (*Id.*).

230. From February 1982 to July 1983, Mr. Sanchez was a partner, producer and director of Brighton Communications, Ltd. in Hollywood, California (*Id.*). While there, he produced and directed television programs and television commercials for national syndication and advertising agencies (*Id.*).

231. From July 1983 to April 1985, Mr. Sanchez was a producer and director for New Works Film Company, located in Miami, Florida, a communications company specializing in the production of television commercials and the development of advertising campaigns for Anglo and Hispanic markets (*Id.*).

232. In addition to his other business pursuits, Mr. Gonzalez-Chavez is the producer and host of "De Cara a Cara" (Facing Each Other), a one-half hour interview program airing twice a week on a public access channel of the Orange-Seminole Cable Television System (Magic City Ex. 3).

233. Ms. Gonzalez is not currently employed (Tr. 2023). For the foreseeable future, she does not intend to work outside her home, but rather to raise her child at home (Tr. 2036-37). Ms. Gonzalez received a BA in Communications in 1983 from the University of Central Florida (Magic City Ex. 4). Ms. Gonzalez was employed by WOFL(TV), Orlando on a full-time basis from 1982 to 1984 (Magic City Ex. 4). During this time, Ms. Gonzalez was the assistant producer of two half-hour interview programs concerning community issues (*Id.*). One program was broadcast daily and the other was broadcast on weekends (*Id.*). Ms. Gonzalez was responsible for maintaining information required for compliance with FCC regulations and the ascertainment of needs and interests of the service area (*Id.*). For a short time following 1984, Ms. Gonzalez appeared on an as-needed basis as a news announcer of WOFL (Tr. 2018).

Diversification

234. Neither Magic City nor any of the stockholders hold any attributable ownership interest in any media of mass communications, other than its interest in the Magic City application itself (Magic City Exs. 1-5).

235. Mr. Gonzalez-Chavez is a producer and host of "De Cara a Cara" (Facing Each Other), a twice weekly interview program shown on a Public Access Channel of the Orange-Seminole Cable Television System, which serves the Orlando area (Magic City Ex. 3; Tr. 1997, 1963). In the "B" cut-off date amendment, Mr. Gonzalez-Chavez stated that should the Magic City application be granted, he would cease producing and hosting this show and would terminate any connection wit the Public Access Channel and the CATV system. *See* Magic City's Amendment filed May 6, 1985).

236. Ms. Ana Gonzalez has worked as a news announcer on an as-needed basis for Station WOFL in Orlando (Magic City Ex. 4; Tr. 2018-19). The "B" cut-off amendment filed by Magic City contained a representation that should Magic City's application be granted, Ms. Gonzalez would terminate her employment and connections with WOFL. Ms. Gonzalez has since terminated this employment (Tr. 2018).

Orlando 27, Inc.

237. Orlando 27 is a corporation with two classes of stock--voting and non-voting (Orlando 27 Ex. 1). Orlando 27's Articles of Incorporation were filed with the State of Florida on March 11, 1985 (OTP Ex. 10). The incorporators were Messrs. Rafael Martinez and David Luff, of the Orlando law firm of Sanders, McEwan, Mims and Martinez (OTP Ex. 10). The Articles were prepared by Mr. J. Gary Miller of the Sanders, McEwan law firm, with the assistance of Orlando 27's original communications counsel (Tr. 472, 646). Both attorneys also prepared Orlando 27's By-Laws (Tr. 646), which were adopted on April 1, 1985 at the organization meeting of Orlando 27 (OTP Exs. 10, 11).

238. Pursuant to its Articles of Incorporation, Orlando 27 is authorized to issue 5,000 shares of Class A voting stock and 5,000 shares of Class B non-voting stock, each share having a par value of1 regardless of class (OTP Ex. 10, p. 3). Class B shareholders have the rights, powers and privileges provided by Florida statutes for non-voting shareholders (OTP Ex. 10, p. 3). Orlando 27's By-Laws provide that only voting shareholders (Class A) may be directors or officers of Orlando 27 (OTP Ex. 11). Pursuant to Articles IV of the Articles of Incorporation, and Article II of the Articles of Incorporation, and Article II of the By-Laws, voting on matters relating to policy and the day-to-day operation of the corporation is to be vested exclusively in the holders of Class A voting stock (OTP Exs. 10, 11).

239. Orlando 27 is composed of five Class A voting shareholders and 11 Class B (non-voting) shareholders (Orlando 27 Ex. 1). Each principal has subscribed for 100 shares of stock (Tr. 606), which constitutes a 6.25 percent equity interest in the corporation (Orlando 27 Ex. 1; OTP Exs. 12, 13, 18). The five current Class A shareholders, officers and Directors of Orlando 27 are as follows:

Roger P. Valladares	Director, President
Georgina S. McEwan	Director, Vice President

Geraldine F. Thompson	Director, Vice President
Rebecca Randall	Director, Secretary
Olga M. Calvet	Director, Treasurer

(Orlando 27 Ex. 1).

240. Prior to filing the application, the original principals or Orlando 27 had informally resolved to elect the following five individuals as Directors and officers of Orlando 27 (OTP Ex. 16):

Roger P. Valladares	Director, President
Georgina S. McEwan	Director, Vice President
Antonio Orizondo	Director, Vice President
Geraldine F. Thompson	Director, Secretary
Rebecca Randall	Director, Treasurer

At the April 1, 1985 organizational meeting apparently attended by the 15 original subscribers to both Class A and Class B stock, these individuals were nominated and elected as the Directors and officers of Orlando 27 (OTP Ex. 16). Also at this meeting of all the principals, By-Laws were adopted, a Stock and Loan Subscription Agreement was accepted, a Corporate Buy-Sell Agreement was adopted, and specific management positions at the proposed television station for each of the five officers of the corporation were approved (OTP Ex. 16).

241. The Buy-Sell Agreement, signed by each of Orlando 27's original subscribers on April 1, 1985, provided that:

> No Class A stockholder shall be entitled to purchase any interest in any Class B Stock should that option to purchase such share become available, and no Class B stockholder shall be entitled to purchase any interest in any Class A stock should that option to purchase such shares become available.

(OTP Ex. 14, Section 2.10). The Buy-Sell Agreement also specifically provided that (*Id.*) :

> No Class A stockholders shall sell or transfer voluntarily any of his shares of Class A common stock, until such time as the corporation has . . . obtained a license . . . and . . . been on the air and broadcasting for at least five (5) years.

242. Notwithstanding these provisions, Mr. Antonio Orizondo on April 24, 1985, converted his 100 shares of Class A stock to 100 shares of Class B stock (OTP Ex. 17; Tr. 548-49). Also, on April 24, 1985, Ms. Olga M. Calvet subscribed for 100 shares of Class A stock (OTP Ex. 17; Tr. 588-61); 704-05). All of the Orlando 27 stock subscribers--now 16--approved this action, along with the adoption of an Amended Corporate Stock and Loan Subscription Agreement, and an Amendment Buy-Sell Agreement (OTP Exs. 17, 13, 15). The only substantive change reflected in these amended agreements was the addition of Olga M. Calvet and the deletion of Antonio Orizondo as Class A. subscribers, and the addition of Orizondo as a Class B subscriber (OTP Exs. 13, 15; Tr. 820). No changes were made to Section 2.10 of the Buy-Sell Agreement (OTP Ex. 15). The conversion of Orizondo's stock was apparently approved without any significant discussion and without specific reference to the provisions in the Buy-Sell Agreement restricting such a conversion (Tr. 818-20; 544-45, 549-50; 814-15).

243. As a result of the conversion of his stock from Class A to Class B, Mr. Orizondo had to resign from his positions as a Director and Vice President of Orlando 27 (OTP Ex. 17). Ms. Calvet was elected as a Director to replace Mr. Orizondo and Geraldine Thompson was elected to replace Mr. Orizondo as Vice President (OTP Ex. 17). Because of Calvet's experience as a Certified Public Accountant, she was deemed best qualified to serve as Treasurer of the corporation. Therefore, Ms. Randall resigned as Treasurer, and was elected to replace Ms. Thompson as Secretary, and Ms. Calvet was elected as Treasurer (OTP Ex. 17).

244. The only other ownership change occurred on November 14, 1985, when the Directors, by a special meeting, and the 16 subscribed shareholders, by written consent, approved the transfer of 100 shares of Class B stock from H. David Luff to Dr. Ruben A. Telan (OTP Ex. 18).

245. Attorney Miller proposed and prepared the Stock and Loan Subscription Agreement which provides, in part, that, if a voting stockholder fails to meet his or her monetary obligations, any non-voting stockholder can at any time pay the unpaid amount to the corporation and any money so paid will be deemed to be a loan to the voting shareholder secured by the voting shareholder's stock. The Agreement does not specify what the terms of such loan would be, the interest rate that would apply or what will happen on default (OTP Ex. 12; Tr. 521-522, 601, 602, 647-648, 658, 715, 796-797, 830-837).

246. Orlando 27 proposes to integrate all of its current Class A shareholders into the day-to-day operation and management of its proposed station on a full-time basis of at least 40 hours per week (Orlando 27 Exs. 2-6). The proposed management positions were originally determined on or before April 1, 1985 (OTP Ex. 16; Tr. 3009). At that time, however, the proposed General Sales Manager was Mr. Antonio Orizondo (OTP Ex. 16). On April 24, 1985, when Antonio Orizondo converted his 100 shares of Class A stock to Class B stock, he had to resign as the proposed General Sales Manager (OTP Ex. 17). Ms. Calvet, who had acquired 100 voting stock that same day was designated to the proposed General Sales Manager position (*Id.*). However, in Orlando 27's Integration Statement, filed September 30, 1985, Ms. Calvet was proposed as the Business Manager. No one was proposed as General Sales Manager.

247. The idea to apply for the Orlando television station originated with Orlando 27's initial communications counsel, who alerted Mr. Rafael Martinez to the fact that Channel 27 was available for application in Orlando. Raphael Martinez recruited Ms. Sanchez-McEwan (Tr. 2964). Mr. Valledares was originally approached regarding formation of the applicant by Dr. Herminio Orizondo, the father of Antonio Orizondo (Tr. 610). Ms. Thompson and Ms. Randall were initially approached by Mr. Reddick (Tr. 610, 634, 783, 791). Messrs. Orizondo, Reddick and Martinez each subsequently subscribed for non-voting shares (OTP Ex. 13).

248. In November of 1984, a preliminary meeting was held at Mr. Martinez' law offices to discuss forming a corporation to apply for Channel 27 (Tr. 465; OTP Ex. 13). This early meeting was attended by Mr. Valladares, Ms. Thompson, Ms. Sanchez-McEwan, Rafael and Mel

Martinez, Dr. Orizondo and his son Antonio, Messrs. Reddick, Honeywell, Wooten, Hiribarne and Townsend, McEwan and Luff (Tr. 463-64, 784-86). Messrs. Wooten Honeywell and Mel Martinez were all attorneys with the same law firm at one time (OTP Ex. 10; Tr. 474, 594, 710). Messrs. Raphael Martinez, McEwan, and Luff are each with the law firm of Sanders, McEwan, Mims & Martinez. Ms. Randall did not attend the first meeting, but came to the second meeting, which was held in January of 1985 (Tr. 791). Between January and March of 1985, informal conversations and at least two or three meetings were held at R. Martinez' law office. These meetings culminated in the instant application for Channel 27 (Tr. 467-70).

249. At some point prior to April 1, 1985, the original parties to the application retained Mr. Raphael Martinez' law firm as local corporate counsel and then approved the decision by Mr. Martinez' firm to retain Orlando 27's original counsel (OTP Ex. 12; Tr. 534-35; 803). These actions were subsequently ratified, on April 1, 1985, by each of the original Class A and Class B stock subscribers (OTP Ex. 12). A few months later, all of the stock subscribers, including subscribers to Class A and Class B stock, discussed changing communications counsel (Tr. 535). Based upon the recommendation of Class B shareholders Wooten, Honeywell, McEwan, Mel Martinez and Raphael Martinez, and discussions with other Class B shareholders, the Directors voted to retain present communications counsel (Tr. 535-37; 725-26; 829; 2986-87. With respect to the legal bills from local corporate counsel, according to Treasurer Calvet, the only legal services billed to Orlando 27 by Martinez' firm have been for the professional services of Mr. Gary Miller (Tr. 720-21). Neither Mr. Raphael Martinez nor Mr. Luff, the two original incorporators apparently billed Orlando 27 for either of their professional legal services (OTP Ex. 10; Tr. 721). Although the corporation with its two classes of stock was officially formed on March 11, 1985, when the Articles of Incorporation were filed, the Class B shareholders continued to attend meetings of the Board of Directors where they participated in discussions and their in-put in the decision-making process was solicited (Tr. 573-74; 580-82; 817-20; 835). Despite their status as purported "passive" investors, Class B non-voting stock subscribers attended the Directors' April 24, 1985 meeting, participated in the discussions, and affirmatively ratified, approved and confirmed all of the following critical actions: the transmitter site change, the acceptance of Ms. Calvet's offer to buy Class A stock, the conversion of Orizondo's stock, the change of Directors, officers and managers; the adoption of Amended Stock Subscription and Buy-Sell Agreements; and the adoption of Orlando 27's proposed programming statement (OTP Ex. 17; Tr. 818). As previously mentioned, Class B shareholders also participated in discussions concerning the corporation's change in communications counsel (Tr. 535-37, 830), and specifically recommended the new counsel ultimately chosen (Tr. 2986-87). The Class B non-voting subscribers also met with new communications counsel and participated in discussions regarding the applicants direction and course. (Tr. 823). In addition, non-voting stock subscriber Rafael Martinez was the individual who negotiated the applicant's fee arrangement with its consulting engineer (Tr. 2986).

Integration of Ownership into Management

250. Roger P. Valladares, who is of Hispanic descent, proposes to be General Manager, full time (a minimum of 40 hours per week) of the station proposed by Orlando 27. As such, he will be in overall charge of all areas of station operations (Orlando 27, Ex. 2, p. 5).

251. Georgina Sanchez McEwan, a woman of Hispanic descent, proposes to be Director of Operations and Public Service Broadcasting, a minimum of 40 hours per week, of the station proposed by Orlando 27 (Orlando 27, Ex. 3, p. 12). In her role as Director of Operations, Ms. McEwan will schedule crews, see to it that the station is broadcasting and programs presented when scheduled, and generally organize the operation (Tr. 3012-3; 3018-9).

252. Geraldine F. Thompson, a Black woman, proposes to be Program Director, a minimum of 40 hours per week, of the station proposed by Orlando 27. As such, she will be responsible for directing and managing the programming of the station, including production and purchase of programming, and will supervise the employees relating to programming (Orlando 27, Ex. 4, pp.17-18; Tr. 835-7). She also will assist the Director of Operations in management of the station's affirmative action program (Orlando 27,Ex. 4, p. 18).

253. Rebecca Randall, a Black woman, proposes to be Director of News, 40 hours or more per week, of the Station proposed by Orlando 27. She will be responsible for coordinating the news staff and maintain liaison with the Orlando Black and Hispanic communities to present news relating to the Orlando minority populations (Orlando 27, Ex. 5, p. 2).

Local Residence

254. Roger Valladares has lived in Orlando since 1984. Georgina McEwan has lived in Orlando since 1960. Geraldine Thompson has lived in the Orlando area for 13 years, currently in Orange County, outside Orlando city limited (Orlando 27, Ex. 4, p. 19; Tr. 776; 782). Rebecca Randall has lived in Seminole County, Florida, east of Orlando and Orange County since 1983 (Orlando 27, Ex. 5, p. 2; Tr. 633-34). Olga Calvet has lived in Orlando since 1962 (Orlando 27, Ex. 6, p. 2).

Civic Participation

255. Roger Valladares has been involved in assisting relief efforts for disasters in Mexico and Columbia (Orlando 27, Ex. 2, p. 6; Tr. 458). Orlando 27 does not claim any civic participation credit for Mr. Valladares (Orlando 27 Integration Statement filed September 30, 1985). Georgina McEwan has been involved in politics as a member of the Republican party; she is a Sunday School teacher and has been involved with: the Junior League of Orlando; Holden Park Association (Neighborhood Association); Pershing Elementary School P.T.A.; Mariel Refugee Bootlift; Orange County Board of Public Instruction (voluntary teacher); and the Rosalind Club (Orlando 27, Ex. 3, pp. 13-14). Geraldine Thompson has been involved with: Minority Youth Drop Out Program Advisory Committee (chairperson); Black Women in Management Network; Young Women Community Center (board member); Greater Orlando Chamber of Commerce; Leadership Orlando Program; the Urban League; Alpha Kappa Alpha Sorority; Human Services Council Evaluation Committee; Junior League Community Advisory Committee; the Girl Friends of Orlando; Project 2000; the Center for Continuing Education for Women (board member); Flor-

ida Association of Equal Opportunity Professionals, Inc. (board member and past president); the United Negro College Fund; the Mount Pleasant Missionary Baptist Church (Orlando 27, Ex. 4, pp. 19-21). Rebecca Randall joined the Orlando YMCA in 1984 and became a board member of the Community Food Bank in November or December 1985 (Orlando 27, Ex. 5, pp. 2-3; Tr. 625-628; 673-675). Olga Calvet has been involved with Civitan (past officer); the Cuban-American Political Action Committee (treasurer) and the Orange County Refugee Relocation and Assistance Group (Orlando 27, Ex. 6, pp. 3-4).

Broadcast Experience

256. Rebecca Randall has been since February, 1986, the host and producer of a daily 30 minute talk show on WOFL-TV, Channel 35 in Orlando. Previously she was a news reporter at WDBO Radio in Orlando form 1982 to 1986. She has also been a news reporter for WOFL-TV; Sheriden Broadcasting in Cocoa Beach, Florida; WDAT Radio in Ormond Beach, Florida; WESH-TV in Daytona Beach, Florida; WBBH-TV in Fort Myers, Florida; and a news researcher and editor at WCBS-TV in New York (Orlando 27, Ex. 5, pp. 3-4).

Diversification of Control of Mass Media

257. None of Orlando 27's voting shareholders has any other mass media ownership interest (Orlando 27, Exs. 2, 3, 4, 5 and 6).

Highland Communications, Ltd.

258. Highland represents itself as a limited partnership, organized under the laws of the State of Florida (Highland Ex. 1, p. 1; Magic City Ex. 29), and composed of the following individuals:

Name	Status	Share of Equity
Carmen S. Reid	General Partner	10 percent
Richard H. Adams	Limited Partner	14 percent
Robert W. Anthony Jr.	Limited Partner	14 percent
Russell W. Divine	Limited Partner	14 percent
Ladd H. Fassett	Limited Partner	14 percent
Robert J. Pleus Jr.	Limited Partner	14 percent
John T. Rutledge	Limited Partner	20 percent

(Highland Exs., 1-7).

259. Under the terms of Highland's original Limited Partnership Agreement, Ms. Reid's financial obligation was to be 12.5 percent of the total expenses incurred in the prosecution of Highland's application, and Mr. Rutledge was not required to make any financial contribution (Highland Ex. 10, pp.3-6). Each of the other five limited partners was required to contribute 17.5 percent of the total expenses incurred, plus they were required to advance, on a *pro rata* basis, all contributions required of the general partner, Ms. Reid (*Id.*). All such sums advanced by the limited partners were to be considered loans which Ms. Reid was required to repay (*Id.*).

260. The First Amendment to Highland's Limited Partnership Agreement was dated as of April 4, 1985, and provided that Mr. Rutledge was now required to contribute a total of200 in cash, plus "all services required by the General Partner in connection with consulting with and advising the General Partner with respect to the business of the Partnership" (Highland Ex. 10, pp. 23-24). These services were assigned a total value of25,000 (*Id.*).

261. A Second Amendment to Highland's Limited Partnership was dated as of September 5, 1985, and, provided, *inter alia*, that the total financial obligation of Ms. Reid, the general partner would be200. The amendment deleted the previous requirement that Ms. Reid be responsible for 12.5 percent of the total expenses and also deleted the provisions requiring the five limited partners other than Mr. Rutledge to advance Ms. Reid's contribution on a *pro rata* basis in the form of loans (Marlin Ex. 30, pp. 2-3).

262. The Partnership Agreement also provides that Ms. Reid was indemnified against any liability or loss (Highland Ex. 10. p. 17), and the principals of Highland testified that they knew of no circumstances under which Ms. Reid would ever be required to make any financial contribution beyond 200 (Tr. 3926; 4203; 4232, 4283).

263. The Second Amendment to the Partnership did retain the provision limiting Mr. Rutledge's total financial obligation to 200, but all references to Mr. Rutledge's providing services in the form of consulting and advice to the general partner were deleted (Marlin Ex. 30, pp. 2-3).

264. One of the limited partners, Russell Divine, testified that he had held discussions with the office of Florida's Secretary of State concerning Highland's Partnership Agreement, and because Florida law does not permit limited partners to provide services for their partnership interests, "the position of the Secretary of State was that there could be no reference to any services. So we deleted that" (Tr. 4163, 4164).

265. With the exception of the200 each to be contributed by Ms. Reid and Mr. Rutledge, each of the other five limited partners is required to contribute 20 percent of the total expenses incurred in the prosecution of Highland's application (Magic City Ex. 30, pp. 2-3). As of the time they testified at the hearing, the total financial contribution of these five limited partners (Adams, Divine, Fassett, Pleus and Anthony) had been between 20,000 and25,000 each (Tr. 3742; 4164; 4248; 4278).

266. Mr. Rutledge received the largest share of the partnership, despite the *de minimus* nature of his financial obligation as compared to the other limited partners, because he had made known the availability of Channel 27, and had advised the other partners as to the viability of such an investment (Tr. 3742-3743; 3825; 4010-4011; 4215-4216; 4238; 4282).

267. The Certificate of Limited Partnership issued to Highland by the State of Florida and dated March 19, 1985, contains the statement that "This Certificate of Authority expires December 31, 1985" (Magic City Ex. 29, 1). Ms. Reid testified that she did not personally attempt to renew Highland's authority, nor did she recall ever seeing any document that purported to do so, but that she had requested one of the limited partners, Russell Divine, to take whatever steps necessary to renew Highland's Certificate of Authority (Tr. 3940-3942). Mr. Divine testified that he had no recollection of Highland's Certificate of Authority ever having been renewed beyond December 31, 1985, no recollection of his being asked by Ms. Reid to have it renewed, nor any recollection of ever even discussing the matter with Ms. Reid (Tr. 4186-4187).

268. Mr. Rutledge, who had prior broadcast experience (Tr. 4268), was the first of Highland's partners to learn of the availability of Channel 27 in Orlando when he was so informed in early 1985 by Lewis Cohen (Counsel to Highland), whom Rutledge referred to as "my attorney" (Tr. 4004).

269. Mr. Rutledge informed Mr. Adams of the availability of Channel 27 (Tr. 4004) and then Mr. Adams and Mr. Rutledge met with Lewis Cohen (Tr. 4301).

270. At some later point, Mr. Adams enlisted the participation of his law firm partners, Pleus, Divine, Fassett and Anthony in an application for Channel 27 (Tr. 3738; 4158; 4223; 4245). Mr. Adams made the decision to offer the position of General Partner to Ms. Reid (Tr. 4159; 4227), as well as determining the equity participation that was available to each partner (Tr. 3743; 3801; 3824; 4010).

271. Ms. Reid testified that it was she who "retained" the services of Cohen & Berfield to act as counsel for the application (Tr. 3830), Jules Cohen & Associates to perform engineering services including preparation of the engineering portion of Highland's application (Tr. 3812), Mr. John Allen to conduct air studies in connection with the transmitter site designated in Highland's application (Tr. 3818), and Mr. Stewart to secure assurance of site availability from the owner of the site (Tr. 3837).

272. Ms. Reid also testified that all these individuals were retained after she signed the Limited Partnership Agreement on March 15, 1985 (Tr. 3818; 3830; 3835-38; Highland Ex. 10, p. 20), and that she had not authorized any of these individuals to perform any services in connection with Highland's application prior to the time she signed the Agreement (Tr. 3835-38; 3880-3882).

273. Despite Reid's belief that she retained these individuals to perform services for Highland's application on or after March 15, 1985, Mr. Lewis Cohen began performing services in connection with what became Highland's application approximately 30 to 45 days prior to Ms. Reid's retaining him (Tr. 4269). Further, Mr. Rutledge testified that it was he who had instructed both Jules Cohen & Associates (specifically Bernie Segal) and Mr. John Allen to perform engineering related services for the application (Tr. 4017-4020), and, indeed, the engineering portion of the application had already been completed prior to the time Ms. Reid "retained" these individuals (Tr. 4305). While Ms. Reid testified that she had retained Mr. Stewart to obtain assurance of site availability after after March 15, 1985 (Tr. 3837), she did not discuss fees with Mr. Stewart, and she did acknowledge that one of Highland's limited partners previously had authorized Mr. Stewart to contact the site owner (Tr. 3890-3892). Indeed, prior to the time Ms. Reid "retained" Mr. Stewart, assurance of the availability of Highland's transmitter site had already been obtained (Tr. 4305).

274. Russell Divine, one of the limited partners, participated actively in the drafting of the Limited Partnership Agreement (Tr. 4160). Mr. Divine, at the request of Mr. Adams, also approached American Pioneer Savings Bank to obtain a financial commitment for Highland, and the commitment obtained by Mr. Divine from American Pioneer was relied upon by Highland in certifying that it was financially qualified (Tr. 4175; 4177-4184). Ms. Reid did not play any role herself in securing a financial commitment for Highland, nor had she authorized anyone else to do so on Highland's behalf (Tr.3909).

275. Mr. Divine also was responsible for filing Highland's Limited Partnership Agreement with the Florida Secretary of State, (Tr. 4171) and was subsequently responsible for drafting each of the amendments to Highland's Partnership Agreement, (Tr. 4161), filing those amendments with the State (Tr. 4171), as well as discussing with the office of the Secretary of State the changes that had to be made to Highland's Partnership Agreement with respect to Rutledge's contribution of services being contrary to Florida law (Tr. 4164).

276. Mr. Adams testified that he believes that he has been a more active participant in the prosecution of Highland's application than the other limited partners have been, including Mr. Divine (Tr. 4309).

Integration of Ownership into Management

277. Carmen Reid, a Black female, is the only principal of Highland proposed to participate in the management of the station, and Ms. Reid proposes to devote a minimum of 40 hours per week as Highland's general manager (Highland Ex. 1). In that capacity she proposes to "direct the day-to-day operations of the station including establishing and implementing policies for hiring and firing of personnel" (*Id.*).

278. Since 1980, Ms. Reid has been the Officer Manager of the law firm of Haas, Boehm, Brown, Ringdon, Seacrest & Fisher (Highland Ex. 1, p. 1;Tr. 3794). Prior to that Ms. Reid had at different times, been a secretary and a stewardess (Tr. 3794). Ms. Reid does not have a college degree, nor has she ever owned her own business (*Id.*). Ms. Reid has no prior experience in the field of mass communications (Tr. 3798).

Local Residence

279. Ms. Reid has resided in Orlando, Florida since approximately November, 1979.

Civic Participation

280. Ms. Reid was encouraged by her employer to become involved with the Orlando Chamber of Commerce, and she has since December, 1984, attended "functions, gatherings, speeches, [and] presentations" conducted by the Chamber of Commerce (Highland Ex. 1, p. 1; Tr. 3795-3796). Ms. Reid has not held any office in the Chamber of Commerce (Tr. 3795).

281. In connection with her job as a legal administrator, Ms. Reid has since June, 1985, been a member of the Association of Legal Administrators (Highland Ex. 1, p. 1; Tr. 3796). Ms. Reid's employer has absorbed the cost of Ms. Reid's dues to the Association of Legal Administrators (Tr. 3796). Ms. Reid has never held any office in the Association (Tr. 3968).

282. Since April, 1983, Ms. Reid has volunteered her services to the American Cancer Society in the form of typing and telephone answering (Highland Ex. 1, p. 1; Tr. 3797). Ms. Reid has not held any office in the American Cancer Society (Tr. 3968).

283. As a member of the NAACP in Orlando, Ms. Reid helped organize support for having the birthday of Martin Luther King, Jr. declared a national holiday, and has attended dinners and other functions sponsored by the NAACP (Tr. 3979-3798). Ms. Reid has never held any office in the NAACP (Tr. 3968).

Diversification of Control of Mass Media

284. Neither Highland nor Carmen Reid has any ownership interest in any medium of mass communications. However, limited partners Rutledge and Adams were, as of the "B" cut-off date, respectively, the President and sole

shareholder and the Secretary-Treasurer, of Radio One, Inc., permittee of an AM radio station in Pleasure Ridge Park, Kentucky (Highland Exs. 2, 7).

Central Florida Television, Ltd.

285. Central Florida is a limited partnership organized pursuant to the laws of the State of Florida, and composed of the following individuals:

Name	Status	Share of Equity
Marita Valentine Sapp	General Partner	25 percent
Louis de la Parte	Limited Partner	50 percent
Terrell Sessums	Limited Partner	25 percent

(Central Florida Ex. 1, p. 1; Ex. 11).

286. In its original application, Central Florida consisted of Valentine Productions, Inc. as the sole general partner with a 50 percent equity interest (Tr. 5635), and the remaining interest was held by Charles Jordan as a limited partner (Tr. 5833).

287. Valentine Productions, Inc. was incorporated on March 14, 1985 and its sole shareholder, director and officer is Marita Sapp (Tr. 5636).

288. On or about May 2, 1985, Marita Sapp (as an individual) replaced Valentine Productions, Inc. as the general partner of Central Florida (Tr. 5636; Central Florida Ex. 1, Ex. A), and Charles Jordan remained the sole limited partner, with Ms. Sapp and Mr. Jordan each holding a 50 percent equity interest (Tr. 5639; Central Florida, Ex. 1, Ex. A).

289. Under the terms of the Central Florida Partnership Agreement in effect on May 6, 1985, the "management and control for the Partnership and its business . . . rest[ed] exclusively with the General Partner" (Central Florida Ex. 1, Ex. A, p. 9, Sec. 9.1), and [n]o Limited Partner . . . [was to] take part in the management of the business, [or] transact any business for the Partnership. . . ." (Central Florida Ex. 1, Ex. A, p. 15, Sec. 10.2).

290. Ms. Sapp "suspended" Mr. Jordan as a limited partner of Central Florida (Tr. 5642; 5645; 5645; 5650; 5651; 5723; 5811), and Mr. Jordan was considered to have ceased being a limited partner as of October 15, 1985 Tr. 5598; Sunshine Ex. 9). Ms. Sapp testified that she had been advised that under Florida law a valid limited partnership requires the participation of at least two persons (Tr. 5651; 5855).

291. An amended partnership agreement was filed by Central Florida with the State of Florida on or about January 9, 1986, pursuant to which Mr. Jordan was no longer a limited partner, but instead, Marita Sapp became a limited partner with a 49 percent equity interest and Valentine Productions, Inc. (the company that had been the original general partner) also became a limited partner with a one percent interest (Tr. 5651-52; 58622). Marita Sapp also remained the sole general partner with a 50 percent equity interest (*Id.*).

292. From January, 1986 until October, 1986, Marita Sapp was considered both a general partner and a limited partner in Central Florida and directed the affairs of the partnership (Tr. 5723-5724).

293. On or about October 17, 1986, Central Florida filed another amended partnership agreement with the State of Florida which set forth the ownership structure that exists currently, *i. e.*, Marita Sapp, general partner with 25 percent equity, Louis de la Parte and Terrell Sessums, limited partners with 50 and 25 percent interests, respectively (Central Florida Ex. 13).

Integration of Ownership into Management

294. Marita Valentine Sapp, a female of Hispanic descent, is the only person proposed by Central Florida to be station's General Manager (Central Florida Ex. 1, pp. 4, 6). Ms. Sapp proposes to devote at least 40 hours per week to this position in which she will have authority for management of the station and supervision of all station employees (*Id.*).

Local Residence

295. Ms. Sapp has resided in Orange County, Florida for the past 15 years, but, apparently not within the city limits of Orlando (Central Florida Ex. 1, p. 6; Tr. 5624).

Civic Participation

296. Ms. Sapp is a member of the Executive Board of Directors of the Southern Ballet Theatre, and has been involved in the organization's fundraising (Central Florida Ex. 1, p. 6).

297. Since 1981, Ms. Sapp has been a volunteer in an Orange County School Board program, in which she has assisted in Choreographing programs, and has taught Spanish, English and manners (Central Florida Ex. 1, p. 7).

298. Ms. Sapp produced, directed, and wrote a stage show for a local cancer society and has been involved in fundraising for a local public broadcast television station. Ms. Sapp is also a member of Women in Radio and Television, and, since the "B" cut-off in this proceeding has joined the Orlando Chamber of Commerce, the Orlando Latin Chamber of Commerce and the Metropolitan Orlando Urban League. For the past five years, Ms. Sapp has been a member of the First Baptist Church in Orlando and has directed the church's Christmas program for the past two years (Central Florida Ex. 1, pp. 7, 8).

Broadcast Experience

299. From January, 1984 to October, 1984, Mr. Sapp hosted a television show on Channel 9 in Orlando called "Dialing For Dollars" (Central Florida Ex. 1, p. 8; Tr. 5703). The show consisted primarily of a movie with Ms. Sapp conducting telephone contests and interviews during commercial breaks (Tr. 5703-5706). Ms. Sapp considered this position to be part-time (Tr. 5702).

300. Ms. Sapp produced and directed a television special for airing in South America, and has performed on and acted as choreographer for several other televisions shows (Central Florida Ex. 1, pp. 8, 9).

Diversification of Control of Mass Media

301. Neither Ms. Sapp nor her husband has any ownership interest in any media of mass communications (Central Florida Ex. 1, pp. 8, 9).

302. Both Mr. Sessums and Mr. de la Parte have ownership interests in an entity that held, until November 28, 1986, a license for Channel 36, Cape Coral, Florida (WFTV-TV) (Central Florida Exs. 11, 12).

303. Both Mr. Sessums and Mr. de la Parte have ownership interests in an entity that is the permittee of WGBA-TV, Green Bay, Wisconsin and of WLAX-TV, LaCrosse, Wisconsin (Central Florida Ex. 11).

304. Both Mr. Sessums and Mr. de la Parte have ownership interests in the permittee for station VWFT-TV, Roanoke, Virginia (*Id.*).

305. Neither Mr. Sessums nor Mr. de la Parte have agreed to divest any of their other broadcast interests if Central Florida should be awarded a construction permit in this proceeding (Tr. 5662).

Florida Television Company

306. Florida Television is a corporation whose Articles of Incorporation were filed with the State of Florida on June 26, 1985 (Florida Television Ex. 1; Orlando 27 Ex. 7). Florida Television's By-Laws were prepared by counsel (Tr. 4498-99), and adopted on September 8, 1985 (Orlando 27 Ex. 8. Florida Television is authorized to issue 2,000 shares of voting stock and 8,000 shares of non-voting stock (Florida Television Ex. 1). Mable Butler is the President, Treasurer, and a Director of Florida Television, and hold 98 percent of its voting stock, or 1960 shares (*Id.*). Aprille J. Meek is the Vice President, Secretary and a Director of Florida Television and holds 2 percent of its common voting stock, or 40 shares (*Id.*). Ms. Butler and Ms. Meek were chosen as Directors on June 4, 1985 (Orlando 27 Ex. 7) and were elected to their respective corporate offices on August 6, 1985 (Central Florida Ex. 9). Stock certificates were issued to Ms. Butler and Ms. Meek on September 28, 1985 (Florida Television Exs. 8, 9).

307. When the FTC application was filed on March 20, 1985, Mr. Butler was stated as the 49 percent voting shareholder, Vice President and Secretary and Ms. Meek was stated as the 51 percent voting shareholder, President and Treasurer. *See* Florida Television Form 301 FCC application, filed March 20, 1985. On May 6, 1985, the "B" cut-off date, Ms. Butler's proposed voting interest was doubled to 98 percent, and Ms. Meek's proposed voting interest was reduced to 2 percent, in order to strengthen Florida Television's application by virtue of Ms. Butler's civic involvement, local resident, minority status and gender (Tr. 4511). At the same time, Ms. Butler and Ms. Meek's proposed corporate positions were switched from those stated in the original application. This significant change in the proposed ownership structure of Florida Television did not affect Ms. Butler's obligations in any way other than in the number of shares she was to purchase (Tr. 4512, 4524-25).

308. The current non-voting shareholders and the number of shares of non-voting stock they each hold are as follows (equity percent is in parentheses): William A. Watts, 1895 shares (18.95 percent); Aprille J. Meek, 1855 shares (18.55 percent); Jean-Pierre Bleger, 1250 shares (12.5 percent); Robert J. Pumpelly, 1250 shares (12.5 percent); Erika M. Perkins, 1,000 shares (10 percent); and W. Wade Watts, 750 shares (7.5 percent) (Florida Television Ex. 1). Florida Television's Articles of Incorporation prohibit holders of non-voting stock from initiating any action or participating in voting (Orlando 27 Ex. 7). Stock certificates were issued to the non-voting shareholder on January 25, 1986 (Florida Television Ex. 10A-10F).

309. Each Florida Television shareholder, except Ms. Perkins, paid 1.00 per share (Tr. 4502). Ms. Perkins, the wife of Florida Television's communications counsel, obtained her 10 percent interest in Florida Television in exchange for her husband's professional legal services in prosecuting the application (Tr. 904, 4502-03, 4563, 4590-92, 4691-92, 4728). Communications counsel suggested this arrangement to William A. Watts, with whom he had previously worked on applications for FM stations in Hannahan, South Carolina, and Temple, Texas (Tr. 841-916).

310. Ms. Butler admitted at hearing that she had no significant participation in the preparation of Florida Television's initial application (Tr. 4524). The preparation and prosecution of the application was handled or directed by Mr. Watts and communications counsel. It was Mr. Watts who first advised Ms. Meek that Channel 27 was available and suggested retention of current communications counsel (Tr. 842-843, 900, 4546-4547). Mr. Watts and Ms. Meek had been business and social friends (Tr. 4581). Mr. Watts was also the person who located Ms. Butler and first contacted her in hopes of obtaining her participation in the application (Tr. 843-44, 910, 4477, 4504- 4507). Mr. Watts telephoned and subsequently met with Ms. Butler and her husband Eddie (Tr. 4477-78, 4504-05). Mr. Watts also introduced Ms. Butler to Ms. Meek.

311. It was through Mr. Watts that all of Florida Television's investors, including Erika Perkins, were recruited (Tr. 842-43, 916, 4686-88, 4701-02). Mr. Watts was a key participant in establishing a budget setting forth the funding obligations of Florida Television's non-voting stockholders (Tr. 876-77), and he still acts as a "go-between" for Ms. Butler when she needs to inform the other non-voting stockholders of money draws (Tr. 897). Mr. Watts also obtained Florida Television's first transmitter site and hired its original engineer (Tr. 846-48, 851, 912). Mr. Watts subsequently assisted Florida Television in obtaining a second transmitter site (Tr.4545). Ms. Butler had no substantive role in the hiring of Florida Television's current engineer (Tr. 4727, 4745). Rather, she simply assented to counsel's suggestion for hiring a new engineering firm (Tr. 4745).

312. It was by Mr. Watts that Ms. Butler was originally offered a 49 percent voting interest in Florida Television (Tr. 4516-17). After Ms. Butler's voting interest was increased to 98 percent (at the advice of counsel) Ms. Meek arranged for Messrs. W. Wade Watts, Bleger, and Pumpelly to loan Ms. Butler the entire1,960 she needed to purchase voting stock and thereby obtain an ownership interest in Florida Television (Central Florida Ex. 8; Tr. 4527-28). Ms. Butler admits she relied entirely upon this loan from Florida Television's investors to purchase her stock because she was not financially capable of purchasing her ownership interest on her own (Tr. 4484). Other than this loan, Ms. Butler has not, and will not, invest any of her own funds in Florida Television (Tr. 4532-33). Furthermore, if Florida Television's application is not granted, or if there is a settlement but Ms. Butler does not receive consideration in an amount sufficient to cover the loan, then Ms. Butler is not obligated to repay the loan (Central Florida Ex. 8; Tr. 4528).

313. In addition, Florida Television's non-voting shareholders agreed to loan the company up to1,000,000 for the construction and initial operation of the station,196,000 of which is earmarked for repayment by Ms. Butler (Tr. 867-68, 870,71, 4483-84, 4532, 4602).

314. Mr. Watts is a television producer and writer, self-employed (Tr. 892). He has certain contracts to produce television shows in Houston (Tr. 893). Mr. Watts received his stock in exchange for "money, time and efforts" (Tr. 879), which he later characterized as expense money contributed initially, plus efforts initially, and then any consultation he was able to provide (Tr. 901). All other non-voting stockholders contributed only money, except Erika Perkins, who contributed her husband's services (Tr. 904); and Aprille Meek, who has contributed some money and some efforts (Tr. 904). Mr. Watts will be available for consultation in the future (Tr. 909).

Integration of Ownership into Mangement

315. Mable Butler is proposed as Florida Television's full-time manager (Florida Television Ex. 2, p. 1). She testified that at the time she was chosen to be the Florida Television's general manager she had no knowledge of television (Tr. 4489). She identified her role as involving setting policy, but the only "policy" she could identify is "good programming" (Tr. 4489). She could not identify what good programming was other than that which "would involve all segments of the community" (Tr. 4493). She has no management experience (Tr. 4494), and testified that the reason she was asked by William A. Watts to join the application was to make the application a strong one, in light of her background of community involvement (Tr. 4478). She intends to rely on Ms. Meek a great deal because Ms. Meek is a knowledgeable broadcaster (Tr. 4542).

316. Aprille Meek is proposed as Florida Television's full-time program director (Florida Television Ex. 3, p. 1).

Local Residence

317. Mable Butler has been a resident of Orlando for the past 29 years (Florida Television Ex. 2, p. 1). Aprille Meek currently resides in Houston, Texas, but will move to Orlando if Florida Television's application is granted (Florida Television Ex. 3, pp. 1-2).

Civic Participation

318. Mable Butler has been involved with: the Mayor's Youth Employment Task Force; the Center for Independent Living; the National Organization for Women; the Young Women Community Club; the Mayor' Senior Citizen Advisory Committee; the Orlando Crime Prevention Commission; the Metropolitan Orlando Crime Prevention Commission; the Metropolitan Orlando Urban League; the NAACP; and the Community Housing Resource Board (Florida Television Ex. 2, pp. 4-5).

Broadcast Experience

319. Aprille Meek has experience in producing, writing, and directing television programs (Florida Television Ex. 3, pp. 4-5).

Diversification

320. Florida Television does not hold any attributable ownership interest in any media of mass communications. Eddie W. Butler, the husband of Mable Butler, is a firm editor/administrative assistant at Station WESH-TV, Orlando (Florida Television Ex. 2). On the "B" cut-off date, Mr. Butler promised to terminate his employment at WESH-TV if the Florida Television application is granted.

321. Since December 1985, Aprille J. Meek has been an Executive Producer at Station KRIV(TV), Houston, Texas. At the time the Florida Television application was filed, she was a program producer at Station KRIV for "Houston Live," a public affairs program (Florida Television Ex. 3). Also at the time the Florida Television application was filed, and until September, 1986, Mr. John L. Meek, the husband of Ms. Meek, was employed as a program producer at Station KUHT(TV), Houston, Texas (Tr. 4577-79). He is currently self-employed as a program producer (Tr. 4577-78). Mr. and Ms. Meek, as independent contractors, produce television programs together, doing business as Redgate Productions (Florida Television Ex. 3). Ms. Meek is also a partner in and producer of Dollars and Sense, which produces a 30-minute television program of the same name that has been broadcast by Station KUHT(TV), Houston (*Id.* ; Tr. 4610-11). The other partners in this venture are Mr. William Watts and Mr. Jack Sorcik (Tr. 4614-15).

322. In Florida Television's Integration and Diversification Statement, filed September 30, 1985, Ms. Meek promised for the first time to terminate her employment at KRIV-TV and her association with Redgate Productions and Dollars and Sense, prior to the commencement of operation of Florida Television's station if its application is granted. In Florida Television's direct case exhibits, Ms. Meek stated that her husband probably will terminate his association with Redgate Productions and move to Orlando, but, if not, the business will be based in and operate from Houston. (Florida Television Ex. 3; Tr. 4609). Previously, in the Integration and Diversification Statement, there had been a representation that Mr. Meek possibly would not terminate his independent contractor program production activities. Mr. Meek also did not promise to terminate his association as an employee of KUHT-TV should the Florida Television application be granted, until the Integration Statement date. Mr. Watts has made no divestiture or disassociation commitment with respect to Dollars and Sense.

323. Teresa L. Watts, wife of William A. Watts, is an officer, Director, and majority stockholder in Bell County Broadcasting Co., an applicant for a new FM station at Temple, Texas (Florida Television Ex. 1). Mr. Watts testified that he worked with Mr. Perkins on this application (Tr. 841). No divestiture commitment has been made.

Comparative Coverage

324. The following comparative coverage data is based on Joint Engineering Exhibit 1.[8] The total area and population which each applicant will cover within its respective Grade B contour are as follows:

Applicant	Area (Sq. Mi.)	Population
Marlin	11,959	2,176,170
Orlando Television	11,723	2,362,455
Sunshine	9,530	1,443,651
Reece	12,739	2,488,669
Magic City	11,860	2,124,171
Orlando	12,739	2,488,669
Highland	11,959	2,176,933
Central Florida	7,914	1,431,975
Florida Television	11,723	2,362,455

325. The following tables illustrate the service to unserved and underserved areas and populations within the differential areas and populations that would be provided by each applicant:

Applicant	Number of Services					
	Pop.	Area	Pop.	Area		
Marlin	0	0	0	2	956	37
Orlando Television	0	0	0	0	4,679	87
Sunshine	0	0	0	12	4,679	92
Reece	0	0	0	12	4,679	92
Magic City	0	0	0	5	956	37
Orlando	0	0	0	12	4,679	92
Highland	0	0	0	0	3,829	60
Central Florida	0	0	0	0	0	0
Florida Television	0	0	0	2	4,254	77

Applicant	Number of Services			
	Pop.	Area	Pop.	Area
Marlin	12,613	157	20,944	443
Orlando Television	17,856	184	23,510	508
Sunshine	19,450	209	9,092	281
Reece	19,450	209	25,680	648
Magic City	10,688	152	20,033	396
Orlando	19,450	209	25,680	648
Highland	16,262	154	23,132	488
Central Florida	5,039	12	4,778	70
Florida Television	16,260	192	23,510	508

CONCLUSIONS OF LAW

Financial Qualification and Financial Certification Misrepresentation Issues - Marlin

326. In certifying its financial qualifications in its FCC Form 301 application (January 1982 edition), Marlin represented that it had reasonable assurance of the availability of sufficient funds to meet the costs of the construction and the initial three months of operation of its proposed television station. Marlin had determined that such costs would approximate 5 million. Marlin did not prepare a budget for its proposed station, but, rather, adopted estimates made in connection with another station in Shreveport, Louisiana. Although this "short-cut" method of arriving at cost estimates is a dubious business practice, it is not *per se* unreasonable. *See Armando Garcia*, 3 FCC Rcd 1065, 1066 (Rev. Bd. 1988). Considering that the Shreveport market is somewhat analogous to the Orlando market and that Marlin's principals discussed the budget with its communications counsel, Marlin's cost estimate is deemed acceptable. To meet these proposed costs Marlin at all times relied on outside financing.

327. Under the old FCC Form 301, an application was required to produce a "commitment letter" stating a bank's willingness to provide the loan or credit sought, and showing the amount of loan or credit, terms of payment or repayment of loan, collateral or security required and rate of interest to be charged.

328. The record reflects that on the date it filed its application Marlin did not possess any bank commitment letter. Although Marlin's treasurer talked about its financial requirements with three different institutions, none supplied written documentation evidencing its willingness to loan the funds Marlin needed.

329. Indeed, Marlin did not request of any of the institutions which its treasurer contacted a commitment in writing. Marlin's President and Treasurer indicated that after discussing the project with their communications attorney both of them understood that although Marlin was required to be able to submit documentation when asked, it need not actually, secure such documentation prior to filing its application. In this regard it is noted that Marlin's principals were negligent in their failure to ascertain what the Commission's requirements in respect to financial qualifications were. Their conduct, however, in certifying their financial qualification did not constitute a wilful misrepresentation. The record reflects that Marlin's Treasurer, Ms. Stuart, did contact three separate institutions for a loan commitment. Ms. Stuart also indicated that it was normal business practice in her circles to consider oral commitments to be relied upon as firm. With respect to allegations that Marlin falsely certified its application, it has not been demonstrated that Marlin intended to deceive. Substantial evidence of an intent to deceive is the *sine qua non* of any prospective misrepresentation issue (*Armando Garcia, supra* ; *Riverside Broadcasting Company, Inc.*, FCC 86-236 (Released May 14, 1986). It is concluded that Marlin made serious and honest efforts to ascertain its projected costs and to secure adequate financing to meet those costs. Marlin may be faulted for not meeting Commission requirements but not for attempting to deceive.

330. The first time Marlin received a bank commitment letter was in April 1986 from Pan American Bank. Although the Pan American Bank letter did confirm the conversations that its president had with Marlin's Treasurer, Ms. Stuart, and did express a willingness to consider making a loan, it did not specify the amount of the loan, nor did it specify requirements as to collateral, guarantees and capital investment. In light of Commission precedent the Pan American Bank letter cannot be the basis of "reasonable" assurance of availability of the needed resources. What's more, Ms. Stuart knew in the spring of 1985 that a5 million loan would be well over the bank's lending limit. Even if it were held that the Pan American Bank letter met Commission requirements, Marlin still needed documentation showing that correspondent banks were willing to participate in the proposed loan. *Kist Corp.*, 57 RR 2d 49 (Rev. Bd. 1984). This it failed to obtain.

331. Marlin received a second commitment letter, dated August 15, 1986 from Lee Rust of Baldwin, Rust and Dizney. This letter expresses willingness on the part of the firm to underwrite a debt commitment to Marlin in the amount of5 million. However Marlin has not established that the firm of Baldwin, Rust and Dizney is a financial institution. Marlin's president believes that the firm will act as a broker arranging loans from other sources subject to a contingent obligation to provide funds itself to the extent it is unable to arrange loans. It does not appear that the primary business of the Baldwin, Rust and Dizney firm is to directly make loans and invest funds, and, therefore, it cannot be deemed a financial institution. Since it cannot be said that the firm is a financial institution, then proof of its financial capability to undertake the5 million loan commitment is necessary. Commission policy is that evidence of financial capability be in the form of balance sheets or financial statements. *See* Form 301 (1980 ed.). No such evidence has been submitted. It must be concluded that the commitment letter of Baldwin,

Rust and Dizney does not demonstrate that Marlin has the reasonable assurance of the availability of sufficient funds to construct and initially operate the proposed station. It follows that the financial issue specified against Marlin is resolved against its favor.

Financial Qualification and Financial Certification Misrepresentation Issues - Sunshine

332. In March of 1985, Sunshine's general partner Michela English and her husband limited partner Donald Quartel, Jr. collaborated to get the Sunshine application underway. Ms. English read public source material about the workings of a television station and its costs. Mr. Quartel was assigned the task of firming up the needed resources for the project. Both were under the impression that, although a bank commitment asserting the availability of the needed funds was required by Commission policy, such commitment need only be oral. After discussing the project with a bank officer at the Sun Bank of Orlando, Mr. Quartel was confident that Sunshine could secure written documentation when ever it would need it. Ms. English certified Sunshine's financial qualification on the strength of a report that Mr. Quartel had contacted Sun Bank. Ms. English knew that McCall had at her disposal personal financial information regarding both herself and her husband.

333. As noted above in connection with Marlin's financial qualifications written documentation evidencing the availability of funds needed for construction and operation is essential for a determination of financial qualification. Since Sunshine lacked such written documentation, it erred in certifying that it was financially qualified. The competing applicants contend that Sunshine's certification was tantamount to mispresentation. However, there is no record evidence that Sunshine, or Ms. English intended to deceive the Commission. Commission precedent holds that substantial evidence of an intent to deceive is the *sine qua non* of any prospective misrepresentation issue. *Armando Garcia, supra* ; *Riverside Broadcasting Company, Inc., supra*. Evidence of record indicates that Sunshine principals lacked diligence in handling the matter of Sunshine's financial qualification, but it is not warranted to say that in certifying its financial qualifications Sunshine intended to deceive the Commission.

334. Sunshine first made an attempt to obtain a written bank commitment in July of 1986. Sunshine's Treasurer, Ms. Adams, was assigned the task. She was advised by the bank officer Ms. McCall that before the bank could issue a commitment letter for3 million it would need to know who the Sunshine principals were and what were their business interests and affiliations. This information was not presented to the bank until the end of April 1987. Ms. McCall signed a Sun Bank letter dated May 1, 1987. This letter was in response to a visit by Ms. English to Ms. McCall. However, this letter cannot be construed as meeting Commission requirements. It is obvious from the face of the letter that it was not issued on the strength of evaluating Sunshine's principals' financial background. The letter clearly calls for "appropriate pro formas and financial statements." Such information is yet to be supplied. Central to any bank loan commitment is the evaluation of the credit worthiness of the parties seeking the loan. Sun Bank has made no such evaluation of Sunshine's principals. The letter may have been drawn as an accommodation to Ms. English and Mr. Quartel, but it does not comport with the Commission's guidelines on financial qualification. The letter states no offer to make a loan, does not identify any rate of interest or any collateral or guarantee requirements which would attach to a loan. *Dutchess Communications Corp.*, 58 RR 2d 381 (Rev. Bd. 1985). No other evidence was offered to establish Sunshine's present financial qualification. It must be concluded that Sunshine was financially unqualified at the time of the filing of its application and continues to be financially unqualified to the present day.

Cross - Interest Issue - Orlando Television Partners

335. The cross interest policy has been applied where an individual is a "key employee" at one station and has an "attributable" interest in another station in the same market. In this regard, a key employee has been defined as a person in a position of authority such as a general manager, program director, chief engineer, or a sales manager. *See , e. g., Martin Lake Broadcasting Co.*, 21 FCC 2d 180 (1970); *United Community Enterprises, Inc.*, 37 FCC 2d 953 (Rev. Bd. 1972). Under the second requirement, *i. e.* -- that the stations serve substantially the same area--the policy clearly applies to stations located in the same community, and has also been applied to stations located in adjacent communities provided that there is a substantial amount of overlap of the service contours. *See Lexington County Broadcasters, Inc.*, 42 FCC 2d 581 (Rev. Bd. 1973); *Farmville Broadcasting Co.*, 47 FCC 2d 463, 464 (1972).

336. As evidenced by OTP's "B" cut-off date amendment, it is clear that Ms. Austin intended from the outset to resign her position at WMFE-FM to assume a position at OTP's station carrying exactly the same title as she currently holds with WMFE-FM. Ms. Austin's commitment in the "B" cut-off date amendment to devote at least 40 hours a week to her duties at the proposed station clearly contemplated that Ms. Austin would resign her current employment position at WMFE-FM, for she could not continue to hold that job while devoting at least 40 hours per week of her time to OTP's proposed television station. The cross-interest issue is resolved in favor of OTP.

Comparative Criteria

Marlin Broadcasting of Central Florida, Inc.

337. Marlin has been found not to possess the reasonable assurance of the availability of sufficient funds to construct and initially operate its proposed station. Marlin therefore is deemed to be financially unqualified and its application must be denied. In case this ruling is reversed on appeal the following conclusions are drawn about Marlin's comparative attributes.

Integration

338. Marlin is a valid corporation and proposes to integrate into management on a full time day-to-day basis each of its seven shareholders. It is entitled to full 100 percent integration credit. A review of the record coupled with the Presiding Judge's favorable assessment of the demeanor of Marlin's principals assures that each of them fully intend to have a hands-on role in the daily management of the proposed station. And there is nothing in the record that would discredit any aspect of Marlin's integration proposal. Each of the principals is committed to work a minimum of 40 hours per week. Each will have management level responsibilities. Although it has been argued by

some competing applicants that some aspects of Paula Stuart's, Elisabeth Stuart's and Paulette Clark's proposed duties will not be of managerial caliber, a review of the entirety of their respective proposals indicates that each will operate on a management level. Paula Stuart and Elisabeth Stuart have taken on responsibilities that have been recognized by the Commission to be managerial. Paulette Clark will supervise station personnel involved in artwork and will be involved in station promotional activities. This work is deemed to be of a managerial level. Each of Marlin's principals is capable of executing management tasks. Each is a college graduate with extensive experience in professional/business endeavors.

339. It has also been argued that Paulette Clark and Jean Butler should not receive full time credit because they did not promise specifically to give up part-time work. This argument is specious. It is undisputed that both Ms. Clark and Ms. Butler have timely promised to relinquish any and all other full time employment to effectuate their respective proposals. Even if Ms. Clark and Ms. Butler were to continue in their part time work, there is no evidence that this would be an impediment to their effectuating their full time proposals.

340. Finally, it has been argued that the Marlin's integration proposal has been compromised by the activities of the husbands of its principals. The record shows that in the initial stages, husbands attended social/dinner-business meetings, but none, save one, participated in the business aspects. Jeff Clark, an attorney, acted as local counsel in the drafting of the articles of incorporation, by-laws and other incorporating forms. The record is devoid of any other activity on Mr. Clark's part that demonstrates that Mr. Clark is likely to be involved in the management of the station. The initial incorporating services are not indicative of future control and are of no consequence.

341. Marlin's 100 percent integration is enhanced by the local residence of its principals and by their participation in civic affairs. Marlin is also entitled to enhancement for the prior broadcast experience of three of its principals or 42.85 percent broadcast experience. Marlin is further entitled to 100 percent female credit and 42.85 percent minority enhancement credit for its three Black shareholders.

Diversification

342. Neither Marlin nor any of its principals have any ownership interest in any medium of mass communications. Carol Surles is a member of the Board of Trustees of WMFE public broadcasting stations. No diversification demerit will be assessed because no Commission rule or policy prohibits Ms. Surles from holding such a position while having an ownership interest and a management position in a commercial broadcast station. *Cf. Mid Continent Broadcasting Co.*, 2 FCC Rcd 210, 212 (1987). Ms. Surles is one of 20 trustees of WMFE and is not involved in day-to-day operations. Her role as trustee is too attenuated to be given weight as a comparative factor (*Minority Broadcasters of East St. Louis, Inc.*, 99 FCC 2d 264, *modified* on other grounds 57 RR 2d 1390 (1985). Carolyn Fennell's position on the Advisory Board of WMFE is not a significant managerial position (*Las Americas Communications, Inc.*, 1 FCC Rcd 786, 791-792 (Rev. Bd. 1986)), and no diversification demerit is warranted.

Orlando Television Partners

Integration

343. It is argued that OTP is not entitled to any credit for the integration of its partners into day-to-day full time management because, by the terms of the Partnership Agreement, the partners lack individual management authority. However, as seen in the findings, the provision of the agr *e* ement requiring written delegation of authority does not apply to the managerial positions proposed for each of the partners. Furthermore, the fact that OTP has stated that decisions generally are reached on a consensus basis, does not mean that each partner does not hold management authority.

344. In *Reginald A. Fessenden Educational Fund, Inc.*, 100 FCC 2d 440, 447-478; 59 RR 2d 1255, 1260-61 (Rev. Bd. 1985), the Review Board stated that "we have previously rejected the contention. . .that management committees are inherently unworkable and entitled to no integration credit." Here full quantitative integration credit must be awarded because it has not been demonstrated that disagreements among the OTP partners will paralyze the management functions of the partnership. On the contrary, the OTP partners to date have reached all decisions by consensus.

345. The record clearly shows that the OTP partners at the outset of their joint venture have delineated what role each would play in the operation of the station and specified the range of managerial activity each will engage in. Each has held fast to this early understanding which was never intended to be compromised. From the beginning as time wore on the individual partners have gained in appreciation the extent of their respective assigned roles, demonstrating their willingness and commitment to carry out what each initially set out to do.

346. OTP, then is entitled to 100 percent quantitative integration credit. This credit is qualitatively enhanced in various degrees. OTP will receive a 100 percent enhancement for local residence, each partner having been a long-term resident of Orlando. Each of the OTP partners have also been engaged extensively in local civic affairs and OTP is entitled to 100 percent enhancement credit for that. Three partners with a total ownership of 50 percent are members of a minority. OTP will be credited with 50 percent minority ownership. All of OTP principals are females, so a 100 percent enhancement credit attaches for female ownership. And finally OTP is entitled to enhancement credit for the broadcast experience of Ms. Roper and Ms. Austin. Their combined ownership interest is 30 percent.

Diversification

347. Neither OTP nor any of its principals hold an attributable interest in any medium of mass communications.

Sunshine

348. The specified basic financial qualification issue specified against Sunshine has been resolved against its favor and Sunshine's application must be denied. The following conclusions regarding Sunshine's comparative posture in this proceeding are made in the event Sunshine on appeal is ruled to be financially qualified.

Integration

349. It is ruled that Sunshine is not entitled to any credit for the proposed integration of Ms. Adams and Ms. Watts. Their combined ownership interest is 10 percent, each owning 5 percent of the corporate equity. Each owns 200 shares of voting stock which compares to 600 shares of voting stock owned by the only other voting shareholder, Ms. English.

350. The record reflects that Ms. Adams and Ms. Watts have had nothing to do with the process of the Sunshine application before it was filed and very little since. Neither became a participant until after the "A" cut- off date. Neither had a role in the selection of counsel or any of the non- voting shareholders. Neither were consulted on or had any input in the Pre- Incorporation agreement. Neither met the 60 percent voting shareholder, Ms. English until after the "B" cut-off date. In light of their lack of activity and the smallness of their respective ownership voting interest and financial stake, it must be concluded that it is unlikely that Ms. Adams and Ms. Watts will play a significant role in the management of the proposed station. It is deemed that they were added to the application solely to acquire enhancement credit for local residence, civic activity and minority ownership.

351. Sunshine will be credited with 60 percent integration for Ms. English's proposal to work a 40-hour week, day-to-day basis. It has been argued that Sunshine should receive no integration credit because its corporate structure was not completed until after the "B" cut-off date, and because the pre-organizational activity of Rob Quartel and attorney Robert Thompson points to the likelihood of their future involvement in management of the proposed station. Recent Commission precedent holds that in circumstances where the corporate structure is not complete, integration will nonetheless inure to the benefit of the applicant where stock ownership is in place. *See Victory Media, Inc.*, 3 FCC Rcd 2073 (1988). In the instant case the stock has been issued and all but Ms. Watts have paid in full. Ms. Watts still owes for the 100 shares she has subscribed. *Victory Media, Inc., supra*, also holds that roles played by non-voting shareholders in the formation of the applicant are not necessarily dispositive of whether the applicant, once established as an ongoing business, will be secretly managed by its passive investors. The decision notes that non-voting stockholders are by definition prohibited from influencing or controlling corporate activities and that in absence of extrinsic evidence that non-voting shareholders will interfere in corporate management, their pre-organizational roles will be discounted. Mr. Thompson is not a shareholder and was paid for his services. His wife is a shareholder in the applicant, but a non-voting one, and not in a position to control corporate activities.

352. No enhancement credit can be given for local residence. Ms. English lives in Washington, D.C. Her only connection with Orlando was during her husband's unsuccessful campaign for the U.S. Congress in 1984, Her short stay in Orlando in 1984 cannot serve as an adequate basis for local residence enhancement. Ms. English also claims to have been involved in Orlando area civic activities, but again this was in 1984 and only in connection with her husband's campaign. No credit will be given for civic participation. Sunshine claims a minority sensitivity offset credit based on Ms. English's past civic involvement and her promise to chair a Citizen's Advisory Board for the station. The past civic involvement claimed by Ms. English is too remote to have a reliable bearing on her present sensitivity and her promise to have an Advisory Board is not such an indication of minority sensitivity as to be regarded as being equal to minority ownership. Ms. English has no broadcast experience. Ms. English's 60 percent integration proposal is enhanced only by her female status and her promise for future residence in the proposed station's service area.

Diversification

353. Neither Sunshine nor any of its stockholders has an cognizable interest in a medium of mass communication.

Reece Associates, Limited

Integration

354. Reece Associates is entitled to 100 percent integration credit for the full time day-to-day integration into management of its general partners RA Communications, Inc. and Marsha Reece. There is nothing untoward about Reece Associates' early ownership structure. The enterprise was begun by RA Communications, Inc. with Marsha Reece owning 51 percent of the stock and Rudolph Reece 49 percent. Prior to the "B" cut-off the ownership structure was changed. The applicant became a limited partnership. RA Communications, Inc. remained in control of the application as the general partner. Its ownership structure was changed to reflect a 95 percent equity held by Marsha Reece and a 5 percent equity held by Rudolph Reece. This switch from a 51 percent-49 percent equity to 95 percent-5 percent equity was done to maximize comparative enhancement credit, a practice permissible under Commission policy. Although RA Communications, Inc. had by the "B" cut-off date secured financial backing from a passive investor, final documents could not be drawn up in time and executed so Rudolph Reece nominally stood in as a limited partner for the subsequent "Trust" limited partners. It was never intended that Mr. Reece would be a permanent limited partner. All this activity was legal under Florida law and proper under Commission policy. *Cotton Broadcasting Company*, 104 FCC 2d 473 (Rev. Bd. 1986), cited in opposition is inapposite. *See* , rather, *Victory Media Inc., supra*. The control of the applicant herein was at no time compromised. Marsha Reece was always in control, as it was initially intended. Although Mr. Reece was a limited partner for a time, any activity he may have performed can also be credited to his involvement as an equity holder in the general partner. The general partners herein are properly insulated from control by the limited partners.

355. Reece Associates' 100 percent integration credit is enhanced by 100 percent local residence, 100 percent civic participation, 100 percent credit for minority ownership, 95 percent plus credit for female ownership and 100 percent credit for broadcast experience.

356. *Specialized programming*. Reece Associates is not entitled to any credit for its proposed specialized programming. Credit for specialized programming may not be given unless it is demonstrated that there is a need for such programming in the proposed community of license, that the proposed programming will meet that need and that such programming is not already available in reasonable amounts. *Broadcast Communications, Inc.*, 93 FCC 2d 1162, 1170 (Rev. Bd. 1983), *modified*, 97 FCC 2d 61 (1984); *Cameron Communications*, 71 FCC 2d 460 (1979); *Flint Family Radio, Inc.*, 69 FCC 2d 38 (Rev. Bd.) 1977.

357. To establish need for the specialized programming and the lack of such programming, Reece Associates relies on Census data, a survey of television and cable suppliers, a survey consisting of interviews of several community leaders, and a survey consisting of telephone interviews of 80 members of the general public. Reece Associates showing falls short of meeting its burden of proof.

358. First, the sampling of 21 community leaders and 80 co-members of the general public is too small to be a reliable indicia of the actual needs of the community. Secondly, although the members of the public were chosen randomly, it has not been shown what the selection process was for the community leaders.

359. Secondly, although Reece Associates interviewed some television stations and cable systems, there is no showing as to what is available on radio or other television stations servicing the area. Nor has it been shown that programs, which, while not specifically designed for minority, but do address issues relating to minority, fail to meet the ascertained needs in a reasonable amount. For example, it has been shown that WOFL, Channel 35, in Orlando airs two programs which, while not designed specifically for the Black Community, do address issues relating to Blacks and other minorities. Additionally, Reece Associates proposes to have religious programming. However not one interviewee identified such need and Reece Associates' own survey shows a good deal of religious programming available. At least a part of its specialized programming does not address an ascertained need.

360. In light of the foregoing, the requested credit for specialized programming is not warranted.

Diversification

361. Neither Reece Associates, nor its general partners, RA Communications and Marsha Reece, nor any of the shareholders of RA Communications has any ownership interest in any medium of mass communications.

Magic *City Broadcasting, Inc.*

Integration

362. Magic City is entitled to receive 100 percent integration credit for Mr. Sanchez's participation. It is argued that in light of the decision in *Cotton Broadcasting Co., supra*, Magic City may not be credited with Mr. Sanchez's proposed integration because he owns both voting and non-voting stock. However, the *Cotton Broadcasting Co.* decision does not apply because it is distinguishable from the facts herein. In *Cotton Broadcasting Co.* the applicant in question was a limited partnership in which one of the general partners was also a limited partner. Credit for his proposed integration was disallowed because by the terms of the limited partnership agreement he was both authorized to act and restricted from acting. Of course, no such conflict exists in Mr. Sanchez's case.

363. It is also argued that Mr. Gonzalez-Chavez's proposed integration is incapable of effectuation. The record reflects that presently Mr. Gonzalez-Chavez works more than full time at his business. He does not intend to divest himself of the architect business or his construction business. Although Mr. Gonzalez states that he fully intends to work at least 40 hours per week at the proposed station, that proposal may not be fully credited. It is irreconcilable with his intentions to maintain his interest in the architectural and construction businesses. Both of these ventures will require some daytime involvement. Mr. Gonzalez-Chavez may be credited only with part time integration in the proposed station, 20 hours per week.

364. Magic City, then, is entitled to full credit for the full time integration of Mr. Sanchez, Ms. Gonzalez and Ms. Boykin or 65 percent, and part time credit for the integration of Mr. Gonzalez-Chavez (35 percent part time).

365. Mr. Sanchez's proposed integration is enhanced by his minority status, and past broadcast experience. Ms. Gonzalez's and Ms. Boykin's proposals are enhanced by credit for local residence, civic participation, minority and female ownership. Mr. Gonzalez-Chavez's part time integration credit is enhanced by local residence, civic participation, minority ownership and past broadcast experience.

Diversification

366. Neither Magic City nor any of its principals has any interest in any medium of mass communications. Mr. Gonzalez-Chavez no longer has any control over a weekly newspaper (La Semana) distributed free to Spanish- speaking residents (Tr. 2015-16).

Orlando 27, Inc.

Integration

367. Orlando 27 seeks credit for the integration into management of all five of its voting shareholders. Orlando 27 is a two tier corporation allowing for voting and non-voting shareholders. By operation of corporate law non-voting shareholders are restricted from being involved in the management of a corporation. However, the provisions of corporate law notwithstanding, the voting shareholders of Orlando 27 have to date allowed non-voting shareholders to participate in corporate decision making so much so that the conclusion must be drawn that in all likelihood the non-voting shareholders will continue to participate in providing input into the management of Orlando 27.

368. The findings reflect that the non-voting shareholders played a major role in the early stages. They recruited the voting shareholders, incorporated the applicant, formulated the stockholders' agreements, participated in electing directors, retained the communications counsel and the engineer, participated in choosing the transmitter site and prepared the application. There are other instances of non-voting shareholder involvement. The voting shareholders have been well disposed to receive advice from the non-shareholders. As a regular course the non-voting shareholders were invited to attend director meetings and their input in the discussions was solicited.

369. Orlando 27 has the earmarks of being a joint venture. For example, despite the restrictions of its buy-sell agreement, the voting and non-voting shareholders collaborated in allowing a Class A stockholder to transfer his share to Class B stock.

370. The separation of the voting shareholders from the influence of the non-voting shareholders in the management of the company is further compromised by the terms of the Stock and Loan Subscription Agreement. The Agreement was drawn by the law firm of which two of the non-voting shareholders are partners and provides that should a voting shareholder fail to meet its obligation, any non-voting stockholder can at any time pay the unpaid amount to the corporation and the money paid will be

deemed a loan to the voting shareholder secured by the voting shareholder's stock. By the terms of the buy-sell agreement, drawn by the same law firm, a voting shareholder may not sell or transfer its shares until after the station has operated for five years. Should the circumstance(s) arise where a voting shareholder(s) becomes financially beholden to the non-voting shareholder, it would only be natural for him or her to be complaisant to the management suggestions of the non-voting shareholder.

371. All of the foregoing indicates that Orlando 27 is in reality a one tier corporation, all of whose shareholders have participated in corporate affairs and management, a fact which serves as extrinsic evidence that they will continue to act in like fashion. *Victory Media Inc.*, FCC 88-134, released April 12, 1988. Therefore, the maximum quantitative integration credit which can be awarded to Orlando 27 is that amount of ownership attributable to the principals proposed to be integrated. *See Coast TV*, 87R- 21, released May 20, 1987 (Rev. Bd.). Since only five of the 16 principals are proposed to be integrated, Orlando 27 can be awarded a maximum 31.25 percent full-time quantitative credit.

372. Orlando 27 is entitled to qualitative enhancement credit for the local residence of its proposed integrated principals. Orlando 27 will also be credited with enhancement credit for the civic participation of Ms. McEwan, Ms. Thompson and Ms. Calvet, for the minority status of all five of its integrated principals and the female status of four of its integrated principals. Orlando 27's integration proposal is also credited with the broadcast experience of Ms. Randall.

Diversification

373. Neither, Orlando 27, nor any of its principals holds any attributable ownership interests in any media of mass communications.

Highland Communications

Integration

374. In Highland we have an entity whose composition began with an experienced broadcast entrepreneur (Mr. Rutledge) approaching a fellow broadcast investor (Attorney Adams) who in turn introduced the Channel 27 investment idea to his law partners and secured a person to serve as general partner who possessed attributes which enhance Highland's comparative status. Mr. Rutledge was to receive as a finder's fee a 20 percent equity interest in the applicant free of any monetary obligations. The general partner, by occupation an office manager, would receive a 10 percent equity interest, being responsible for 12-1/2 percent of the total expenses incurred in the prosecution of the application.

375. In time the initial agreement was amended to reflect that Mr. Rutledge in return for his non-assessible 20 percent equity interest was required to contribute200 in cash plus all services required by the general partner in connection with the consulting with and advising the general partner with respect to the business of the partnership.

376. In a second amendment to the initial agreement the general partner's total financial obligation was reduced to200. Also, Mr. Rutledge's obligation to provide services in the form of consulting and advice to the general partner was deleted.

377. It was Attorney Adams, Mr. Devine and Mr. Rutledge who did all of the work to get the enterprise moving. Ms. Reid testified that she initiated some action but her testimony was contradicted by that of the limited partners. In fact the record shows that Ms. Reid only ratified what was done by the others.

378. From the foregoing, it is clear that the general partner, Ms. Reid has not played a a significant role in the operation of the limited partnership to date. The competing applicants cite legal precedent to the effect that significant pre-grant activity on the part of limited partners indicates the likelihood of their post-grant activity. However, the decision in *Victory Media, Inc.*, FCC 88-134, released April 12, 1988, suggests that the role played by non-voting shareholders (here limited partners) in the formation of the applicant is not necessarily dispositive of whether the applicant, once established as an ongoing business, will be secretly managed by its passive investors. Extrinsic evidence that a passive investor will influence or control the operation of the corporation (here limited partnership) is needed to conclude that the insulating safeguards are a sham.

379. Highland argues that it is entitled to 100 percent integration credit because its general partner is properly insulated from control by the limited partners. Highland states that its amended limited partnership agreement comports with the Commission policy as enunciated in *Ownership Attribution Reconsideration*, modified 61 RR 2d 739 (1986) and the fact that it didn't at the time Highland's application was filed is of no consequence because it has been ruled that the more stringent standards set forth in *Ownership Attribution*, *supra*, would be applied only prospectively. *See Independent Masters, Ltd.*, 104 FCC 2d 178, 60 RR 2d 835, 843 n. 25 (Rev. Bd. 1986). Highland contends that there is no record evidence which shows that Ms. Reid cannot effectuate her integration proposal.

380. Highland's Amended Limited Partnership Agreement notwithstanding, the question remains whether, in light of Ms. Reid's small equity interest (10 percent), any integration credit should be awarded. *Cf. Minority Ownership in Broadcasting*, 92 FCC 2d 849, 853-55 (1982), proceeding terminated 99 FCC 2d 1249 (1985).

381. In *Independent Masters, Ltd., supra*, the Review Board considered the question whether a "general partner holding a mere 10 percent equity interest in an entity can extrapolate that fractional equity interest into an *effective* 100 percent comparative 'integration credit' (along with the concomitant weight of any enhancing merit for such minority ownership, etc.)." (Underlined in the original.) The Review Board noted that the Commission in its *Minority Ownership in Broadcasting*, statement, 92 FCC 2d 855 (1982), indicated that in a limited/general partnership agreement arrangement the minority group general partner(s) must hold, at the very least, a 20 percent overall interest in the entity to ensure that complete managerial control over the station's operations is reposed in the general partner(s). In *Independent Masters, Ltd., supra*, the Review Board did approve an award of 100 percent integration credit for a general partner who had only a 10 percent interest. The Board stated that it did so in light of certain critical factors which made it less likely that the limited partnership arrangement at issue would permit the limited partners to effect a sham. The critical factors were that the applicant in question had minority group members holding an aggregate of 60 percent of the total equity

and that the proposed general partner had a professional career that had been in highly important broadcast management positions. In was in view of these two very strong factors that the Review Board allowed the extrapolated 100 percent integration credit. We don't have any extenuating circumstances in Highland's case.

382. Ninety percent of Highland's equity is held by white males. Ms. Reid has no broadcast experience whatsoever and, in fact, did not contemplate a broadcast career when approached to join Highland. Lacking the extenuating circumstances present in *Independent Masters, Ltd., supra*, and in light of the Commission's statement in *Minority Ownership in Broadcasting, Inc., supra*, it must be concluded that because Ms. Reid's equity interest is only 10 percent, there is no assurance that complete managerial control over the proposed station's operation is reposed in the general partner, Ms. Reid. Inasmuch as the insulating provisions of Highland's Amended Limited Partnership Agreement are given no weight, Highland must be considered to be a group of persons organized to run a TV broadcast station. Since only one is proposed for integration, Highland will be credited with a 10 percent integration credit for Ms. Reid's participation which is enhanced by her local residence and female status. Slight enhancement credit is given for her limited civic participation.

Diversification

383. In light of the ruling regarding Highland's Amended Limited Partnership insulating provisions, Highland must be charged with Mr. Rutledge's 100 percent ownership of Radio One, Inc., the original permittee of an AM station in Kentucky and with Mr. Adams' corporate position as Secretary-Treasurer of Radio One.

Central Florida Television, Ltd.

Integration

384. Central Florida is entitled to be credited with a 100 percent full-time integration for the proposed participation of its general partner, Marita Valentine Sapp. It is argued that because Ms. Sapp was for a period of 10 months both the general partner and limited partner, Central Florida's claim for full integration credit should be rejected. The reasoning is that for the period of time in question the general partner's independence in conducting partnership affairs was undermined by the participation of the limited partner. *Cf. Cotton Broadcasting Co., supra*. However, the facts in *Cotton Broadcasting Co., supra*, are distinguishable from the facts herein. Ms. Sapp's control of the limited partnership was at no time undermined. During the 10 month period in question, she was the sole principal. There can be no question that she was under anyone's influence but her own.

385. Ms. Sapp's integration proposal is enhanced by her past residence and future residence in the proposed service area, her civic participation, her minority and female status, and her past broadcast experience.

Diversification

386. Neither Ms. Sapp nor her husband has any ownership interest in any media of mass communications.

Florida Television Company

Integration

387. The competing applicants have alleged that Florida Television's application is a sham and that it is not entitled to any integration credit. In *Victory Media, supra*, the Commission stated that "applications will be found to be shams only where there is a basis in the record for inferring that non- voting shareholders will exercise influence or control of an ongoing business." A review of the record herein indicates that the voting shareholders of Florida Television will not be free from the influence and control of the non-voting shareholders.

388. Initially Ms. Meek was to be 51 percent voting shareholder. Ms. Butler with no broadcast experience was picked as a 49 percent shareholder by Mr. Watts because of her background history of civic involvement. Subsequently, Ms. Butler's interest was changed to 98 percent voting and Ms. Meeks' to 2 percent voting. This change was not negotiated but accepted upon advice of counsel. Ms. Butler has no financial stake in the application. The money loaned to her by the non-voting shareholders to purchase her stock does not have to be repaid in the event Florida Television does not receive a grant. In the event of a grant, Ms. Butler is required to pay her pro-rata share of the construction loan which the non-voting shareholders will make to the corporation, but she has no resources to meet this obligation. Ms. Butler has not been involved in the process of the application and the record reflects that she has small awareness of its particulars. Ms. Butler has no management experience and candidly admits that she will rely on the advice of Ms. Meeks who has broadcast experience. Ms. Meeks, of course, is non-voting stockholder. Ms. Watts, another non-voting stockholder, will be available for consultation.

389. In view of Ms. Butler's lack of financial stake in the application, her lack of broadcast and management experience, her lack of involvement in the application process and her candid admission that she will rely on the advice of a non-voting shareholder, it must be inferred that Ms. Butler will not be free from the influence and control of the non-voting shareholders. No weight is given to Florida Television's two tier corporate structure. It is deemed that Florida Television's corporate structure was devised to gain maximum enhancement credits based on Ms. Butler's participation. Florida Television is considered to be a one tier corporation of whose shareholders only two are proposed to be integrated into management. For the purpose of assessing integration credit Florida Television, then, is credited with 19.6% integration for the participation of Ms. Butler and 18.95 percent integration for the participation of Ms. Meek.

390. Ms. Butler's participation is enhanced by her local residence, civic participation, and by her minority and female status. Ms. Meek's participation credit is enhanced by her minority and female status and past broadcast experience.

391. Neither Florida Television nor any of its principals has any attributable ownership interest in any media of mass communications.

Comparative Coverage

392. The proposals of all the applications, with the exception of Central Florida and Sunshine, are the same or very close in terms of total population coverage. Thus, each warrants a slight preference over Central Florida and Sunshine. *Cotton Broadcasting Co.*, 60 RR 2d 982 (Rev. Bd. 1986).

393. None of the applicants provides a first or second service. With respect to service to underserved areas, OTP, Sunshine, Reece, Orlando 27, Highland and Florida Television are comparable and merit a very slight preference over Marlin and Magic City and a slight preference over Central Florida. Marlin and Magic City each merit a very slight preference over Central Florida. *Christian Broadcasting of Midland, Inc.*, 99 FCC 2d 578, 582- 83 (Rev. Bd. 1984).

394. Thus, overall OTP, Reece Associates, Orlando 27, Highland and Florida Television are approximately equal. Marlin and Magic City would be ranked next followed by Sunshine and then Central Florida.

ULTIMATE CONCLUSIONS

395. Marlin and Sunshine have been found to be financially unqualified. OTP, Reece Associates and Central Florida have each been credited with 100 percent full time integration. Magic City has been credited with 65 percent full time integration and 35 percent part time. Orlando 27 received a 31.25 percent full time integration credit, Highland 10 percent and Florida Television 38.55 percent. Based on the foregoing creditation, Magic City, Orlando 27, Highland and Florida Television are eliminated. The integration differences between each of them and those awarded 100 percent integration credit is more than 12 1/2 percent, an amount which has been ruled to be a "clear quantitative difference." *See New Continental Broadcasting Company*, 88 FCC 2d 830, 850 (Rev. Bd. 1981).

396. As between OTP, Reece Associates and Central Florida, OTP has received the least enhancement preference, having been awarded only a 50 percent minority ownership preference and a 30 percent broadcast experience preference. The slight preference OTP receives for comparative coverage over Central Florida does not offset Central Florida's greater preference for minority ownership and broadcast experience. The very slight preference it has over Reece Associates for female ownership is more than offset by Reece Associates' greater preference for minority ownership and broadcast experience. OTP, too, is eliminated.

397. The two remaining applicants have had their respective proposals enhanced for local residence, civic participation, minority ownership, female status and broadcast experience. However, greater weight has been given to some of the enhancement credits allocated to Reece Associates. A comparison of the bases for the credits given each for civic participation indicates that the participation of Reece Associates' general partners was of greater frequency and of broader range. Also, a comparison of the broadcast experience of each indicates that the broadcast experience of Ms. Reece was more extensive than that of Ms. Sapp's. Additionally, Reece Associates receives a slight preference for comparative coverage. Central Florida has a very slight edge over Reece Associates for female ownership (100 percent versus 95.2 percent), but this edge is not enough to offset Reece Associates preference for comparative coverage, and the slight preferences for civic participation and broadcast experience. In sum, Reece Associates' proposal, on a comparative basis, best serves the public interest and its application will be granted.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken to the Commission by a party or the Commission reviews this Initial Decision on its own motion in accordance with Section 1.276 of the Rules, the application of Reece Associates, Limited (File No. BPCT-850320KR) for a construction permit for a new television station in Orlando, Florida IS GRANTED, and the applications of Marlin Broadcasting of Central Florida, Inc. (File No. BPCT-850319KF), Mary L. Demetree, Barbara C. Roper, *et al.* d/b/a Orlando Television Partners (File No. BPCT-850320KK), Sunshine Television 27, Inc. (File No. BPCT-850320KN), Magic City Broadcasting, Inc. (File No. BPCT- 850320KU) Orlando 27, Inc. (File No. BPCT-850320KX), Highland Communications, Ltd. (File No. BPCT-850320LA), Central Florida Television, Ltd. (File No. BPCT- 850320LD) and Florida Television Company (File No. BPCT-850320LM) ARE DENIED.[9]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTES

[1] The following applications were each dismissed during the course of this proceeding: Elim Broadcasting, Inc. by *Order*, FCC 85M-4202, released October 25, 1985; Emily LaForett by *Order*, FCC 85M-4106, released October 21, 1985; Sanford Seminole Television Network by *Order*, FCC 86M-152, released January 10, 1986; Spanish American Broadcasting, Inc. by *Order*, FCC 85M-4055, released October 17, 1985; Orlando Telecasting Company, Inc. by *Order*, FCC 86M-541, released February 11, 1986; RCTV, Inc. by *Order*, FCC 86M-3097, released October 20, 1986; Marilynn J. Craig by *Order*, 87M-120, released January 16, 1987; U.S. Communications Inc. by *Order*, FCC 87M-219, released February 2, 1987; Matthew D. Wiggins by *Order*, FCC 85M-3475, released September 5, 1985; Westlake Television, Ltd. by *Order*, FCC 86M-2849, released September 17, 1986; and Orlando TV Partners, Inc. by *Order*, FCC 85M-3555, released September 13, 1985.

[2] The air hazard issue specified against each applicant was resolved in each applicant's favor by the following orders: *Order*, FCC 86M-1327, released April 17, 1986, in favor of Orlando 27; *Order*, FCC 86M-1341, released April 18, 1986, in favor of Magic City; *Order*, 86M-1529, released May 5, 1986, in favor of OTP; *Order*, FCC 86M-3578, released December 10, 1986, in favor of Marlin; *Order*, FCC 87M-786, released April 9, 1987, in favor of Central Florida; *Order*, FCC 87M-798, released April 13, 1987 in favor of Reece Associates, Florida Television and Highland; and *Order*, 88M-2054, released July 1, 1988 in favor of Sunshine.

[3] The cross-interests issue specified against Orlando 27 was resolved in its favor in *Order*, FCC 85M-4850, released December 11, 1985.

[4] Ms. English's recollections were indecisive. At hearing on January 6, 1987, she first stated that no principal had contacted a bank (Tr. 4870), but on the next day she changed her testimony to state that voting shareholder, Ms. Adams had visited a bank (Tr. 5023), and finally at the convened special session in June of 1987, she stated her husband, a non-voting shareholder, contacted Sun Bank prior to her filing the application (Sunshine Ex. 10; Tr. 4870, 6229-30).

[5] Mr. Quartel did not believe that his contacting the bank was crucial for he characterized his assignment as a "loose direction," avering that "if I hadn't done, it, nobody would have shot me" (Tr. 6298).

[6] OTP partners foresee no need for a tie breaking mechanism, since they plan to continue discussing any matter among themselves until a consensus or a majority vote is reached (Tr. 2466-68, 2504, 2547, 2643). To date no situation has arisen where agreement could not be reached through group consensus (Tr. 2924-25).

[7] Martha Walton presently participates in the operation of a gift shop--a family business in which her husband, son and daughter all have been involved (Tr. 2669-71). In the event of grant, her husband is capable of handling the shop and is to retire in June of 1987. Additionally, Ms. Walton has appointed a full time assistant manager who is capable of doing the same duties Ms. Walton had been doing (Tr.1670-71, 2679).

[8] For comparative purposes, the figures used are as of the cut-off date, with the exception of those cases where the applicant has subsequently amended. In those instances the lesser figures have been adopted.

[9] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 88-372

In the Matter of

Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS) — RM-5712

NOTICE OF PROPOSED RULE MAKING

Adopted: July 20, 1988; Released: August 4, 1988

By the Commission:

1. We have before us a petition for rule making filed by Waterway Communications System, Inc. (Watercom) asking us to amend Sections 2.106, 80.215(h), 80.385, and 80.475 of our Rules, 47 C.F.R. §§ 2.106, 80.215(h), 80.385, and 80.475 to remove or relax mileage restrictions on operating coast stations on frequencies below 217.000 MHz and to permit Automated Maritime Telecommunications Systems (AMTS) operations nationwide. Public Notice was given on January 30, 1987 (Report No. 1640). Comments were timely[1] filed by Westinghouse Broadcasting Company, Inc. (Group W); Capital Cities/ABC, Inc. (Cap Cities/ABC); North Texas Public Broadcasting, Inc. and Metropolitan Pittsburgh Public Broadcasting, Inc.; K-Six Television, Inc. (K-Six); Wilson Communications, Inc. (Wilson); KTVE, Inc.; Educational Broadcasting Corporation (WNET(TV)); Post-Newsweek Stations, Florida, Inc. (Post-Newsweek); the Assocation of Maximum Service Telecasters (AMST); RKO General, Inc.; Buford Television, Inc. of Panama City (Buford); A.H. Belo Corporation, Guy Gannett Publishing Co., and Multimedia, Inc.; Outlet Broadcasting, Inc.; WOKR Partners and GNG-2, Inc.; WLOX Television, Inc.; Independent Broadcasting Company; Knight-Ridder Broadcasting, Inc.; and National Association of Business and Educational Radio, Inc. (NABER). Reply comments were timely[2] filed by Watercom; Riverphone, Inc. t/a Maritel (Maritel); Wilson; WNET(TV); and Gilmore Broadcasting Corporation.

I. BACKGROUND

2. As a result of a U.S. proposal, the 1979 World Administrative Radio Conference (WARC) allocated the 216-220 MHz band to the maritime mobile service in Region 2. The Commission allocated this band for use on the Mississippi River System by AMTS. *InlandWaterways Communications System*, 84 FCC 2d 875, *recon.*, 88 FCC 2d 678 (1981), *aff' d sub nom. WJG Tel. Co., Inc. v. F.C.C.*, 675 F.2d 386 (D.C. Cir. 1982). Subsequently the Commission expanded the authorized service area of the AMTS to the Gulf Intracoastal Waterway (GIWW), 51 RR 2d 440 (1982), and the Gulf of Mexico, 56 RR 2d 1613 (1984). The Commission established the AMTS to provide automated, integrated, interconnected communications as a solution to complaints from tug and barge operators that existing ship-to-shore service from individual public coast stations was not adequate. The AMTS could be described as similar to a cellular phone system, which includes non-voice services as well, for tugs and barges to use as they move along a waterway.

3. Throughout the course of its deliberations regarding AMTS the Commission had concern about the potential for interference to reception of television, particularly channels 13 and 10, and conditioned the operation of AMTS coast stations on the requirement that "no harmful interference will be caused to television reception." Section 80.215(h). Channel 13 (210-216 MHz) is adjacent to the AMTS band so there is a potential for adjacent channel interference. Channel 10 (192-198 MHz) is one-half the TV intermediate frequency below the AMTS band so there is a potential for "half-IF interference." [3]

4. The Commission further adopted some specific provisions to minimize the possibility of interference to television reception. There are 80 channels in the AMTS, divided into four groups of 20 -- Groups A, B, C and D. Section 80.385. Applicants proposing to locate a coast station within 169 kilometers (105 miles) of a TV channel 13 station or 129 kilometers (80 miles) of a TV channel 10 station must submit an engineering study showing the means of avoiding interference within th . Grade B contour of the TV station. Sections 80.475(b)(1) and 80.215(h)(2) - (4). Additionally, Group C and D frequencies cannot be used for coast stations within 105 miles of a TV channel 13 station, as they are closer in frequency to TV channel 13 than are the Group A and B frequencies. Sections 80.215(h)(5) and 80.385(a)(2). Finally, if despite these precautions interference to TV reception is caused, Section 215(h)(4) requires the licensee to eliminate any interference caused within the Grade B contour of the TV station within 90 days of being notified by the Commission. If the interference is not eliminated within the 90 day period, operation of the offending coast station must be discontinued. That rule also requires the licensee to help resolve all complaints of interference, whether inside or outside the Grade B contour.

5. A study was conducted to analyze the interference potential from AMTS systems to TV reception. R. Eckert, *Guidance for Evaluating the Potential for Interference to TV from Stations of the Inland Waterways Communications Systems*, FCC/OST TM 82-5 (July 1982)(*Guidance*). This report is a model for applicants to use in performing any required engineering analysis of potential interference from AMTS systems to TV reception. The analysis was based on very conservative interference protection criteria. The TV picture quality used for the analysis was "just perceptible" interference. Further, the analysis does not account for the interference reduction due to TV receiver antenna discrimination. That is, generally, the TV transmitter and the AMTS transmitter would be in different directions from the TV receiver antenna. When that antenna is directed toward the TV station so as to enhance its reception, the AMTS signal, coming from a different direction, would tend to be suppressed.

6. There is presently only one AMTS system, licensed to Watercom, serving the Mississippi River System and the GIWW. Watercom was initially granted authority to construct and operate an AMTS on the Group A frequencies in 1982, and its authorization was modified to include the Group B frequencies in 1984. Watercom built its system

and put it on the air in segments in 1986 and 1987. During the two seasons it has been operating there have been no complaints of interference to television reception.

II. PETITION

7. Recently Maritel filed applications for authority to construct and operate an AMTS using the Group C channels along the Lower Mississippi River and the GIWW and additionally filed a petition for waiver of Section 80.215(h)(5) concerning its proposed use of the Group C channels. TV Answer, Inc. filed a petition requesting to use a portion of the group D Channels for a television viewer- response system (See RM-6196). TV Answers petitions, however, will be handled separatly. The Maritel petition was denied (and its applications dismissed) because it raised a question of general applicability going to the basis of the rule and thus could properly be addressed only in a rule making proceeding. *Maritel*, 3 FCC Rcd (1988).

8. While Maritel's waiver request was pending, Watercom filed the subject petition for rule making. Watercom requests two changes to the AMTS rules. It requests that AMTS be extended nationwide, noting that the 1979 WARC allocated the 216-220 MHz band for maritime mobile throughout the U.S. and that this was a primary objective of the U.S. at the WARC. Watercom also requests that the prohibition on operating within 105 miles of a TV channel 13 on Group C and D frequencies be eliminated or modified -- either by rescinding Section 80.215(h)(5) or modifying it to permit operation on Group C and D frequencies subject to a limitation on signal strength within the 105 mile area. To support this request, Watercom incorporates by reference Maritel's waiver request, which contains various technical arguments and calculations which bear on it. Essentially, Maritel states that its system is designed so that each short spaced station would cause no more interference than would a station on a Group B channel at the same site. Basically it would achieve this result by using lower power resulting in a smaller service area at each station than would be the case if Group B frequencies were used. It also includes a plan to resolve any actual interference problems.

III. DISCUSSION

9. The commenters were numerous TV interests, NABER and Maritel. Their comments touched on both nationwide expansion and use of Group C and D frequencies.

A. *Expansion*

10. NABER argues that it is premature to consider any expansion before Gen. Dkt. No. 87-14, pertaining to land mobile use in the 216-225 MHz band, is resolved. Opposition of NABER at 3-4. The *Notice of Proposed Rule Making* in that proceeding, 2 FCC Rcd 796 (1987), proposed an allocation for land mobile service in the 220-222 MHz band. It also proposed to maintain the existing maritime mobile allocation in the 216-220 MHz band in accordance with the international allocation for that band in Region 2. It specifically noted that geographical limitations on land mobile operations in the 216-220 MHz band necessary to protect channel 13 operations would be so restrictive as to make a land mobile allocation virtually useless especially in major cities where land mobile congestion is greatest. Thus Gen. Dkt. No. 87-14 does not contemplate a reallocation of the 216-220 MHz band. Accordingly, because the allocation changes contemplated in Gen. Dkt. No. 87-14 and the issues in this proceeding concern two separate and distinct blocks of spectrum, we reject NABER's argument.

11. Some commenters argue that expansion is premature because there is no demonstrated demand for AMTS. *See , e. g.*, Oppositions of AMST at 12; Group W at 5; K-Six at 6; KTVE at 6; WNET at 9; NABER at 3. Additionally, almost all the commenters quoted our statement, made when we expanded the AMTS to the Gulf of Mexico, that "Prudence requires an evaluation of an operating maritime system before the band is made available nationwide for such systems." 56 RR 2d 1613, 1614 (1984).

12. Expansion, however, must be seen in the context of this historical perspective: The U.S. sought and obtained an allocation of 216-220 MHz for maritime mobile in Region 2 at the 1979 WARC. When we initiated the AMTS service we restricted it to the Mississippi and adjacent waterways because of extreme caution. We are satisfied that sufficient experience has been gained to move forward now with expansion of this service. Watercom has been operating for over a year, for two shipping seasons, and its operations have not caused interference problems. Petitioner, Watercom, indicates that there is demand for AMTS nationwide. We anticipate that further information relating to demand will be submitted in response to this *Notice of Proposed Rule Making*.

13. Other arguments against extending AMTS nationwide relate to concern about interference. For example, Outlet states that coastal regions where new AMTS systems might be established are heavily populated so the number of people who might be affected by interference is quite large. Opposition, Engineering Statement at 1. *See also* Oppositions of Group W at 3; Buford, Engineering Statement at 1. Wilson, licensee of WWUP-TV, Sault Ste. Marie, Michigan, states that Watercom's "ribbon" system[4] is an inadequate model for projecting future AMTS interference, particularly in areas like Sault Ste. Marie, which is surrounded by navigable water. Opposition at 10. A similar thought was expressed by WNET(TV), Opposition at 3. In response, we reiterate that the keystone of our AMTS rules is that "no harmful interference will be caused to television reception" pursuant to Section 80.215(h). The provisions of Section 80.215(h) will provide sufficient protection against interference throughout the country.

14. In a related issue, Section 80.475(b) of the Rules requires an AMTS system to cover 60% of a navigable waterway. Waterways less than 240 kilometers (150 miles) long are required to be covered in their entirety. The purpose of these requirements is to provide for integrated systems that offer coverage over marine shipping routes and to exclude from the AMTS band individual VHF coast stations. We propose to delete these requirements from the rules to permit greater flexibility in the design of AMTS systems. Although we propose to delete the rigid percentage and mileage requirements, we request comment on whether there is a need for some minimal area coverage requirement or other incentive to encourage interoperability over substantial portion of a waterway or coastline.

B. *Use of Group C and D frequencies*

15. We are proposing to permit use of Group C and D frequencies subject to the same restrictions against interference to television that apply to Group A and B frequencies. The current restrictions on the use of the C and D channels limit their usefulness, as Maritel's waiver request shows. Generally, the commenters express a concern that any change in the rules will mean that we are permitting interference. Oppositions of Outlet at 2-4; Group W at 6-7; Cap Cities/ABC at 8; Wilson at 13-15; WNET(TV) at 14-19; Post-Newsweek at 5; AMST at 15-18; RKO-General at 2; Buford at 2. This fear is misplaced. We are not proposing to permit increased interference. We are proposing to treat the C and D channels on the same basis as the A and B channels. This means that, in addition to the requirement that "no harmful interference will be caused to television reception," the technical standards and interference analysis requirements of Section 80.215(h)(1)-(4) and (6) will apply. If these requirements prove to be insufficient, and interference does occur, Section 80.215(h)(6) requires the licensee to eliminate it or cease operation.

16. We note broadcasters' general concern that any given TV service area may receive interference from more than one coast station. Oppositions of AMST at 17; Post-Newsweek at 6; WNET(TV) at 15. They explain that while the power of individual coast stations may be reduced on Group C and D channels, an increased number of coast stations may be employed. We agree that the cumulative effects must be considered. Section 80.215(h)(3) states that a coast station will be authorized if the applicant submits a plan limiting the interference contour to fewer than 100 residences or if the applicant takes the measures described in Section 80.215(h)(3)(i)-(iii). In applying this requirement, where more than one coast station's interference contour affects a given TV station, we will count the total number of residences affected.

17. Some commenters state that it is not possible to rely on AMTS systems to solve interference problems as the means of doing so do not exist or would be prohibitively expensive. Oppositions of AMST at 14, 17-18; Buford, Engineering Statement at 4-5. This argument is pure conjecture. These commenters have offered no evidence that our current rules, which contain strong measures designed to ensure that TV receivers do not suffer interference, will not prove effectve.

18. Some of the arguments in the comments pertain to Maritel's specific proposed system and concern purported flawed calculations and a lower grade of protection for television viewing, *e. g.* Oppositions of KTVE at 6-9; K-Six at 6-9; Outlet, Engineering Statement at 3; Group W at 6; Wilson at 17; WNET(TV) at 18; AMST at 16-18. We are not granting or otherwise approving Maritel's specific proposal, so any possible deficiencies in its request are not relevant to this proposed change to the AMTS rules. We fully expect that any engineering analysis submitted with an application for a system using Group C and D channels would take into account the reduced separation in frequency of those channels from TV channel 13. The analytical model developed in the *Guidance* report does so. In light of these factors, we are proposing to delete the absolute mileage prohibitions for the Group C and D channels and permit use of these channels within 105 miles of a channel 13 TV station when supported by an appropriate technical analysis.

C. *System licensing*

19. Currently we license the AMTS operator and the ship users. We propose to include the ship users' units under the AMTS operator's license as a part of the system, and eliminate licensing the users individually. This plan would simplify licensing. An example of this type of blanket or system licensing is found in the common carrier Domestic Public Land Mobile Service. *See Individual Radio Licensing Procedures*, 77 FCC 2d 84 (1980). A similar approach is used in the cellular radio service. Blanket or system licensing would not free the users from complying with operational rules, but it would free them of any requirement to obtain an FCC license before beginning AMTS operations. As soon as a service agreement was reached with the AMTS licensee, service could begin.

IV. CONCLUSION

20. We believe that the changes proposed in this proceeding would enhance the use of the electromagnetic spectrum by allowing more AMTS operators to provide service and more users to benefit from AMTS service while fully protecting reception of television from interference. Accordingly, we propose to amend Parts 2 and 80 to provide for nationwide use of AMTS and to treat the Group C and D channels on the same basis as Group A and B. We also intend to implement system licensing of AMTS systems. We also propose to delete the 60% rule. This *Notice of Proposed Rule Making* is issued under the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303.

21. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte*, or otherwise, are permmitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

22. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. 47 C.F.R. § 1.1206.

23. Authority for issuance of this *Notice* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **September 26, 1988** and reply comments on or before **October 11, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

24. In accordance with Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rules make additional frequencies available to maritime users in the U.S. A negative impact is not expected for any entity. An increase in the communications services available to the maritime industry would result.

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

26. A copy of this Notice of Proposed Rule Making will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

PROPOSED RULES

Parts 2 and 80 of Chapter I of Title 47 the the Code of Federal Regulations would be amended as follows:

Part 2 : Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by removing footnote NG 121 from column 5 of the 216-220 MHz band and by removing the text of the footnote at the end of the table, *Section 2. 106 Table of Frequency Allocations.*

Part 80 -- Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081- 1105, as amended; 47 U.S.C. 151-155, 301-609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

2. Section 80.215 is amended by removing paragraph (h)(5) and renumbering the remaining paragraphs.

3. Section 80.385 is amended by removing the second sentence in paragraph (a)(2).

4. Section 80.475 is amended by removing paragraph (a) and the first two sentences of paragraph (b), and redesignating the current paragraphs (b) and (c) as new paragraphs (a) and (b), respectively.

5. Section 80.29(a) is amended by adding one additional entry at the end of the table, as follows:

Type of Change	Required action
* * * * *	
Increased number of mobiles (AMTS)	**Written notice to the Commission.**

6. Section 80.1169 is removed and reserved.

7. A new section 80.54 is added as follows:

§ 80.54 Automated Maritime Telecommunications System (AMTS) - System licensing. AMTS licensees will be issued blanket authority for a system of coast stations and mobile units (subscribers). AMTS applicants will specify the maximum number of mobile units to be placed in operation during the license period.

FOOTNOTES

[1] The time to file was extended until April 1, 1987, by Order, 2 FCC Rcd 1567 (1987).

[2] The time to file was extended until May 18, 1987, by Order, April 16, 1987.

[3] Half-IF interference is a phenomenon caused by mixing of radio frequency signals within a TV receiver. Nonlinearities in the receiver produce a second harmonic of an interfering signal (e.g. an AMTS signal), which mixes with the second harmonic of the TV receiver local oscillator to create interference which will be passed through the TV receiver intermediate filter (IF).

[4] Watercom's AMTS is located primarily along a stretch of interconnecting rivers and is therefore often referred to as a "ribbon" system.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-374

In the Matter of

Inquiry into alleged
abuses of the Commission's
processes by applicants for
broadcast facilities

ORDER

Adopted: July 20, 1988; Released: August 4, 1988

By the Commission:

The Commission has under consideration information indicating that its processes may have been significantly abused by applicants for new broadcast stations and for the assignment of existing licenses and construction permits. In several instances, these applications apparently were filed using fictitious persons as principals and/or as consultants/advisors. In addition, it appears that in several instances multiple applications were filed for the same community of license by applicants who were linked with one another. Moreover, all of the applications which are the subject of this order share a common denominator in that each appears to have been filed either on behalf of, or with the assistance of, Dr. Bernard Boozer of Central Square, New York.[1] Information before the Commission suggests that, in most instances, these bogus applications were filed for the purpose of reaching a settlement agreement rather than for the purpose of obtaining a construction permit. In each instance, the applications apparently were submitted under false premises. Such conduct is in violation of, *inter alia*, Sections 73.3513(d),[2] 73.3520 [3] and 73.3525(a)[4] of the Commission's Rules, (47 C.F.R. Sections 73.3513(d), 73.3520 and 73.3525(a)). The information before the Commission raises serious questions as to whether these applicants, and their attorneys, consultants and advisors have intentionally engaged in a pattern of conduct which constitutes an abuse of the Commission's processes. Because of the apparent connection between applications for various communities, consideration in a single investigatory proceeding is warranted, rather than in the context of individual proceedings where isolated evidence of abuse may arise. *See* Section 403 of the Communications Act of 1934, as amended.

IT IS ORDERED, That pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, for the purpose of this inquiry authority is hereby delegated to the Chief Administrative Law Judge of the Commission to require by subpoena the production of books, papers, correspondence, memoranda and other records deemed relevant to the inquiry; to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and to perform such other duties in connection therewith as may be necessary or appropriate to the compilation of a complete record concerning the subject matter of this inquiry.

IT IS FURTHER ORDERED, That the Chief Administrative Law Judge is specifically authorized to designate a Commission Administrative Law Judge to exercise the authority conferred by this Order, and to require witnesses to testify and produce evidence under authority of, and in the manner provided in, Section 409 of the Communications Act of 1934, as amended, when requested to do so by Commission Counsel.

IT IS FURTHER ORDERED, That the subpoena powers delegated by this Order shall be exercised in accordance with Sections 1.331 through 1.340 of the Commission's Rules. Motions to quash or limit subpoena shall be directed to the presiding Administrative Law Judge in accordance with Section 1.334 of the Rules.

IT IS FURTHER ORDERED, That the provisions of Section 1.27 of the Commission's Rules shall apply to the production of oral and documentary evidence under subpoena.

IT IS FURTHER ORDERED, That the presiding Administrative Law Judge is directed to attempt to complete the investigation by November 1, 1988, so that a final staff report to the Commission can be submitted within calendar year 1988.

IT IS FURTHER ORDERED, That the investigation conducted pursuant to this Order shall be non-public.

IT IS FURTHER ORDERED, That upon conclusion of the inquiry ordered herein, the presiding Administrative Law Judge shall certify the record thereof to the Commission for appropriate action.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Boozer had been an applicant for an FM construction permit at Illion, New York (BC Docket No. 82-425). In that proceeding he was found not qualified to be a Commission licensee. *Paradise Broadcasting and Communications System, Inc.*, 100 FCC 2d 387 (Rev. Bd. 1985), *aff' d*, FCC 85-491, released September 12, 1985.

[2] Section 73.3513(d) of the Rules specifies: "Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein however, will be considered a violation of Section 73.1015, are also punishable by fine and imprisonment, U.S. Code, Title 18, Section 1001, and by appropriate administrative sanctions including revocation of station license pursuant to Section 312(a)(i) of the Communications Act."

[3] Section 73.3520 of the Rules specifies, in pertinent part: "Where there is one application for new or additional facilities pending, no other application for new or additional facilities for a station of the same class to serve the same community may be filed by the same applicant . . . ."

[4] Section 73.3525(a) requires, *interalia*, that a joint request for approval of a settlement agreement be accompanied by an affidavit of each party attesting to the fact "that its application was not filed for the purpose of reaching or carrying out such agreement."

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-5

In the Matter of

Amendment of §§ 22.501(g)(2) and
94.65(a)(1) of the Rules and
Regulations to Re-Channel the RM-5206
900 MHz Multiple Address Frequencies

Amendment of § 94.65(a)(1) of the
Rules to Revise Footnote 3 in the
Frequency Table to Make the RM-5362
Frequencies Available for use by
any Part 94 Eligible

Amendment of Part 2 and §§ 94.63(d)(5)
and 94.65(a)(1) Footnote 3 of the
Rules to Permit Operation of Mobile RM-5178
Remote Meter Reading Systems on a
Primary Basis on the Exclusive
Power Radio Service Frequencies in
the 952.3625 - 952.8375 MHz Band

Amendment of Part 94 of the Rules to
Permit Intrasystem Communications
Among Multiple Address System RM-5383
Master Stations

ORDER

Adopted: July 22, 1988; Released: August 4, 1988

By the Commission:

1. The Commission has before it a Request for Stay (Request) filed by Digital Radio Networks, Inc. (Digital) on April 26, 1988, a Motion for Stay Pending Reconsideration (Motion) filed by Radscan, Inc. (Radscan) on May 12, 1988,[1] a Partial Opposition to Motion to Stay filed by EnScan, Inc. (EnScan) on May 19, 1988, and an Opposition to Requests for Stay filed by NITECH, Inc. (NITECH) on May 27, 1988. Digital and Radscan seek to stay the effective date of the co-channel mileage separation standard set forth in Section 94.63(d)(4)(i) of the Rules, 47 C.F.R. § 94.63(d)(4)(i), as amended by the Report and Order in the above-captioned proceeding.[2] EnScan, a manufacturer of mobile meter reading equipment, and NITECH, an equipment marketer, argue that the stay, if granted, should be limited to the separation standard between fixed master stations and that it should not suspend the implementation of those rules governing mobile-to-fixed or mobile-to-mobile separation standards. [3]

2. The Report and Order amends, *inter alia*, Section 94.63(d) of our Rules governing Multiple Address System (MAS) operations to provide for a fixed master-to-master co-channel mileage separation of 75 miles.[4] Digital, an MAS licensee, contends, generally, that a fixed mileage separation is unnecessary and, specifically, that the 75 mile separation criterion would result in interference to its operations.[5] Radscan, also an MAS licensee, supports the Commission's decision to establish a fixed mileage separation but also asserts that the 75 mile separation criteria will result in destructive interference.[6] In addition, on May 19, 1988, Radscan filed a Clarification to its Motion in which it stated that its request is limited to stay of the 75 mile co-channel separation criteria.[7]

3. Upon review of the pleadings, we find that the contention that implementation of the new standard would result in harmful interference to existing licensees warrants further study. Accordingly, we conclude that the public interest will be served by staying the effective date of the co-channel separation criteria stated in Section 94.63(d)(4)(i) of the revised Rules pending final decision on the petitions for reconsideration.[8] Furthermore, we are also staying the effective date of the co-channel separation standards for fixed-to-mobile and mobile-to-mobile because these standards are the product of the technical assumptions supporting the fixed master-to-master standard.[9]

4. Our action here reinstates former Section 94.63(d)(4)(i) of our Rules, 47 U.S.C. § 94.63(d)(4)(i), which provides that an applicant must state that the border area of the applicant's service area is no closer than 70 miles from the service area of existing licensees or pending applications that could be affected by the applicant. To this end, all applicants for multiple address station licenses filed on or after May 12, 1988,[10] will have three options: They may (1) certify that their applications comply with former Section 94.63(d)(4)(i) of our Rules and, thus, can be processed according to the agency's established procedures; (2) amend their applications to comply with former Section 94.63(d)(4)(i) so that they can be processed;[11] or (3) apply for a refund of the application fee if their applications fail to comply with former Section 94.63(d)(4)(i) and cannot be amended to be brought into compliance. Petitions for refund of the application fee should be directed to the Managing Director and filed with the Secretary at 1919 M Street, N.W., Room 222, Washington, D.C. 20054.

5. Pursuant to Sections 1.43, 1.44 and 1.429 of the Commission's Rules, and in view of the discussion above, IT IS ORDERED that revised Section 94.63(d)(4)(i) of our Rules, 47 U.S.C. § 94.63(d)(4)(i), adopting co-channel mileage separation criteria for multiple address stations is STAYED *nunc pro tunc* pending reconsideration; therefore, the separation criteria stated in former Section 94.63(d)(4)(i) will be reinstated during the interim.

6. IT IS FURTHER ORDERED that those portions of the Rules modified by the Report and Order in this docket[12] and not specifically stayed by this Order will remain in effect.[13]

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] Both Digital's Request and Radscan's Motion incorporate, either directly or by reference, a Petition for Reconsideration of the Report and Order in PR Docket No. 87-5. Additionally, the American Petroleum Institute (API) filed a Statement in Support of Digital's Request on May 12, 1988. This Order is not responsive to the merits of either Petition for Reconsideration. All petitions for reconsideration of the Report and Order in PR Docket No. 87-5 will be addressed in a subsequent order.

[2] Report and Order, PR Docket No. 87-5, 3 FCC Rcd 1564 (1988).

[3] EnScan's Partial Opposition at 2, 4-6; NITECH's Opposition at 2, 4-5.

[4] The Commission also modified § 94.63(d)(4)(i) by adopting a mobile-to-fixed separation standard of 65 miles and a mobile-to-mobile separation standard of 50 miles. Report and Order, PR Docket Number 87-5, 3 FCC Rcd at 1569.

[5] Request at 4-7 & 12-13.

[6] Motion at 4 (incorporating Radscan's Petition for Reconsideration at 3-5 & 12-13.). Alternatively, Radscan proposes that the Commission adopt a separation distance of 110 miles, *idCf.* Digital's Request at 13 (suggesting a separation of 120 miles if the Commission maintains its decision to establish a fixed separation distance).

[7] Clarification to Motion for Stay Pending Reconsideration by Radscan at 2.

[8] *See* Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam).

[9] The dispute regarding the applicability to mobile systems of the technical assumptions upon which the separation criteria are based convinces us that the public interest would be furthered by staying the revised separation criteria for all MAS systems pending reconsideration. *See* NITECH's Opposition at 4-6. In addition, EnScan provides no support for its assertion that it will suffer serious financial hardship if the revised rules relating to mobile-to-mobile co-channel separation are stayed. *See* EnScan's Partial Opposition at 5.

[10] Applications received before May 11, 1988, have been processed under the former criteria. *See infra* at n. 13 (effective date).

[11] Applications must comply with the service radius guidelines provided in the Public Notice issued December 6, 1985, but need not comply with the power reduction table provided in § 94.65(a)(1)(iv) of the revised Rules because the reinstatement of the former criteria ordered herein obviates the need for such table pending reconsideration. A change in the applicant's service area will be considered a "substantial amendment" pursuant to Sections 1.918 and 1.962 of our Rules, 47 C.F.R. §§ 1.198 & 1.962, and processed accordingly.

[12] Report and Order, PR Docket No. 87-5, 3 FCC Rcd at 1572.

[13] Erratum, PR Docket No. 87-5, 3 FCC Rcd 2467 (1988) (amended rules effective May 11, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

BELLSOUTH
SOUTHWESTERN BELL
NYNEX AMERITECH
PACIFIC TELESIS
US WEST
Statement of Financial Accounting
Standards No. 96, Accounting for
Income Taxes

AAD 8-1926

ORDER

Adopted: July 21, 1988; Released: August 1, 1988

By the Chief, Common Carrier Bureau:

1. On May 9, 1988, in accordance with Section 32.16 of the Commission's rules, BellSouth Corporation, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth), filed notice of an intention to adopt Statement of Financial Accounting Standards No. 96 (SFAS-96), "Accounting for Income Taxes", which was adopted by the Financial Accounting Standards Board (FASB) in December 1987. Since receiving BellSouth's notification, the Bureau has received similar filings from Southwestern Bell Telephone Company (Southwestern Bell); New England Telephone and Telegraph Company and New York Telephone Company (NYNEX); Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, the Ohio Bell Telephone Company and Wisconsin Bell, Inc. (Ameritech); Pacific Bell and Nevada Bell (Pacific Telesis); and the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West).

2. Section 32.16, Changes in Accounting Standards, requires carriers to apply new standards adopted by the FASB and provides for automatic Commission approval of a new standard unless the Commission notifies carriers within 90 days after receiving notice of intention to follow a new standard that the new standard should not be adopted. Section 32.16 requires carriers to file not only a notice of intention to follow a new standard but also a revenue requirement study analyzing the effects of the new standards for the current year and a projection for three years.

3. SFAS-96 supersedes earlier guidance set out in Accounting Principles Board Opinion No. 11 (APB-11). While SFAS-96 retains the basic concept of comprehensive interperiod income tax allocation, it departs from the "deferred" method of income tax accounting as set forth in APB-11 and prescribed in Section 32.18 of the Commission's rules and requires the use of the "liability" method instead. Among other things, the "liability" method would require balance sheet recognition of tax liabilities not currently recognized and would require adjustments of the liabilities to reflect the effects of tax rate changes.

4. SFAS-96 accounting could require the addition of new accounts to Part 32 and may raise rate base issues that could affect Part 65 of the Commission's rules. Therefore, we are notifying carriers that SFAS-96 should not be adopted unless the Commission specifically requires the adoption of SFAS-96 accounting in the future.

5. ACCORDINGLY, IT IS ORDERED, pursuant to Section 32.16 of the Commission's rules, as amended, 47 C.F.R. §32.16, that all subject carriers are hereby notified that they may not adopt SFAS-96 accounting.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re the Application of

ABS COMMUNICATIONS File No. W-2693

For a waiver of the Rules to allow local government agencies to be provided paging service on Business Radio Service frequencies

ORDER

Adopted: July 12, 1988; Released: July 22, 1988

By the Chief, Private Radio Bureau:

1. ABS Communications presently offers a private carrier paging service on frequency 152.480 MHz under the call sign WNJN 519. It provides the only such service in its area. Recently ABS was contacted by the Levy County Public Health Unit and the Chiefland, Florida Police Department with requests to provide paging service. These agencies operate on a limited budget and cannot support such a service on their own. As local government agencies, however, they are not eligible in the Business Radio Service and therefore ABS may not offer them service.

2. ABS has requested a waiver of Rule 90.179(a), 47 U.S.C. §90.179(a), which limits provision of service on Business Radio Service frequencies to eligibles in that Service. In support of its request ABS has indicated that it is the only provider of commercial paging service within a 50 mile radius. It claims that common carrier paging services avoid their rural area because of limited profit potential. ABS has also submitted letters from the above referenced agencies which indicate that they do not have sufficient funding to establish their own paging system. The letters indicate that unless a waiver of Rule 90.179(a) is granted, they will have to forego the benefits of a dependable paging service.

3. Pursuant to Rule 1.3, 47 U.S.C. §1.3, the Commission may waive any provision of its rules if it determines that good cause has been shown and that grant of the waiver does not undermine the policies embodied in the rule. *See WAIT v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) and *Thomas Radio v. FCC*, 716 F.2d 921 (D.C.Cir. 1983). We find that unique circumstances are involved in this case which justify grant of the waiver. ABS is the only commercial paging provider in the area. Consequently, the local government entities in the area have limited alternatives. The paging requirements of these agencies should not be significant and we do not believe this waiver would affect availability of Business Radio Service frequencies, especially since ABS will be primarily providing service to entities routinely eligible in the Business Radio Service. We believe that it is in the public interest to allow these agencies to access ABS's paging facilities so that they may better serve the public.

4. We therefore grant ABS Communications a waiver of Rule 90.175(a) consistent with the above facts for an indefinite term. The waiver will permit ABS to provide paging service to the Levy County Health Unit and the City of Chiefland Fire Department.

5. Accordingly, pursuant to Rule 0.331, 47 C.F.R. §0.331, ABS Communication's request for a waiver of Rule Section 90.175(a) IS GRANTED for an indefinite term.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-346

In re Applications of

LARRY LANGFORD (hereafter Langford)	File No. BPH-851022MO
PN RADIO COMPANY (hereafter PN)	File No. BPH-851113MF
HORIZON BROADCASTING COMPANY (hereafter Horizon)	File No. BPH-851114MH
RADIO ASSOCIATES INC. (hereafter Associates)	File No. BPH-851114MI
WALKER-KENT BROADCASTING COMPANY (hereafter Walker-Kent)	File No. BPH-851115MP
STEVEN J. KUIPER (hereafter Kuiper)	File No. BPH-851115MQ
William Bryant d/b/a PORTAGE FM GROUP (hereafter FM)	File No. BPH-851115MR
WHW BROADCASTING GROUP, LIMITED PARTNERSHIP (hereafter WHW)	File No. BPH-851115MS
PORTAGE COMMUNICATIONS, INC. (hereafter Communications)	File No. BPH-851115MU

For a Construction Permit
for a New FM Station on
Channel 243A in Portage, Michigan

HEARING DESIGNATION ORDER

Adopted: June 24, 1988; Released: August 8, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *PN.* With respect to Broadcast Data Corp., one of PN's two general partners, PN has stated in Exhibit II-1 of its application that:

> "[i]n an action relative to Broadcast Data Corp.'s parent company, Graphic Scanning Corp., by Order released August 24, 1982, the Commission designated for hearing applications filed by A.S.D. Answer Service, Inc; B.W. Communications Inc; P.A.L. Communications, Inc; and Vineyard Communications Systems, Inc. The stated purpose of the proceeding was to determine the relationship between Graphic and the applicants and, in particular, whether Graphic is a real party in interest in the applicants. In an Initial Decision released January 9, 1985, the presiding Administrative Law Judge concluded a) that, because of the non-traditional nature of the transaction involved, Graphic shall be deemed the real party in interest in the A.S.D., Vineyard, P.A.L. and B.W. applications; and b) that all parties had exhibited a lack of candor and on occasion, intentionally misrepresented material facts to the Commission."

3. Claiming the above conclusions were without merit, Graphic filed exceptions with the Commission on March 15, 1985. After a proxy fight resulted in new management, Graphic asked the Commission to approve a settlement between the concerned parties. By its *Memorandum Opinion and Order*, released November 21, 1986, the Commission approved such an agreement vacating the conclusions reached in the *Initial Decision*. This action absolved the revised Graphic corporate entity from the Administrative Law Judge's adverse conclusion, but held that the findings would apply if former Graphic principals Yampol, Slodowitz and Finfer, active in management at the time of the alleged misconduct, were to regain control of Graphic. *A. S. D. Answer Service, Inc. et al.*, 1 FCC Rcd 753 (1986), at paragraph 6. A petition for reconsideration of this action has been filed. An appropriate condition will be specified.

4. *Horizon.* The Commission no longer requires a waiver request where an applicant proposes to include more than 80% of the community of license within the 70 dBu contour. *See Letter to South West Communications, Inc. from Dennis Williams, Acting Chief, FM Branch*, (reference 8920-HVT) dated July 16, 1986, citing *John R. Hughes et al.*, 50 Fed. Reg. 5679 (1985). Our analysis confirms that the proposal of Horizon is above the 80% coverage standard. Accordingly, the Horizon waiver request will be dismissed as moot.

5. *Walker - Kent.* Pursuant to the *Report and Order* in MM Docket No. 86-74, RM-5169, released June 29, 1987, the Commission allotted Channel 243A to Dewitt, Michigan. The Walker-Kent application, as amended May 23, 1986, is short-spaced to the allotment of channel 243A at Dewitt, Michigan. Because Walker-Kent's application was

filed at a time prior to final grant of the new Dewitt, Michigan allocation, the applicant will be permitted to amend its application to specify a fully-spaced site. *See Report and Order* in MM Docket 86-74, 2 FCC Rcd 3832 (1987), and *Rayne Broadcasting Company, Inc.*, 2 FCC Rcd 7552 (1987). Accordingly, Walker-Kent will be required to submit an amendment within 30 days of the release of this Order specifying a fully-spaced site to the Dewitt, Michigan allocation.

6. *Kuiper*. In response to Item V-B, FCC Form 301, Kuiper specifies its North Latitude coordinate as 41'. However an engineering examination indicates the correct coordinate is 42', and that Kuiper's specification of 42' was inadvertent error. In this regard, because Kuiper's 7.5 transmitter site and 60/70 contour maps are plotted correctly, the Commission could "drawing on the application as a whole", confidently verify the correct value. Moreover, this error has no effect on the acceptability of Kuiper's application which complies with all of our acceptance requirements. However, Kuiper shall amend his application by submitting the correct data to the presiding Administrative Law Judge.

7. *WHW*. WHW has described its organizational structure as a limited partnership. The Commission's policy is that the involvement of a limited partner in the management structure will not exempt that partner's broadcast interests for attribution purposes in the comparative phase of the proceeding. *Report and Order* in MM Docket 83-46, 97 FCC 2d 997 (1984), *modified on reconsideration* 50 Fed. Reg. 27438 (1985). Applicant has not offered any evidence that the specified limited partners will be sufficiently insulated from the management and operation of the media-related activities of the applicant or that it will not be in violatioin of the Commission's cross interest policy. Accordingly, unless it submits an appropriate showing in these regards to the presiding Administrative Law Judge within 30 days of the release of this Order, its limited partners will be deemed attributable.[2]

8. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the following applicants have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding: Walker-Kent and FM.

9. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after December 27, 1985, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Langford	6/2/86
PN	8/12/87, 9/30/87, 10/30/87, 11/19/87, 12/21/87, 1/14/88, 2/1/88, 4/18/88, 4/28/88, 6/6/88
Walker-Kent	8/29/86 (Engineering & Legal)
Kuiper	1/22/88, 2/19/88
Communications	1/5/87

10. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: Walker-Kent and FM.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That, in the event a construction permit is awarded to PN as a result of this proceeding, its grant shall be without prejudice to (i) whatever action, if any, the Commission may deem appropriate should former Graphic principals Yampol, Slodowitz and Finfer regain control of Graphic; (ii) in light of the outcome of the appeal in *A. S. D. Answer Service, Inc. et al.*, CC Docket No. 82-587 *et seq.*

14. IT IS FURTHER ORDERED, That the Horizon request for waiver is DISMISSED AS MOOT.

15. IT IS FURTHER ORDERED, That, Walker-Kent shall file an amendment, as specified in Paragraph 5 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

16. IT IS FURTHER ORDERED, That, Kuiper shall submit the amendments, as specified in Paragraph 6 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

17. IT IS FURTHER ORDERED, That WHW shall submit, if appropriate, an amendment, as specified in paragraph 7 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

18. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

19. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Langford, PN, Walker-Kent, Kuiper, and Communications ARE GRANTED, and the accompanying amendments ARE ACCEPTED to the extent indicated herein.

20. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

21. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 29, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

22. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] At the request of Radio Portage, Inc., by letter dated January 26, 1988, its application was dismissed by Chief, FM Branch on April 27, 1988.

[2] W.H.W. Enterprises, Inc. (Enterprises), a limited partner in applicant, has filed an application for a new FM station at Kalamazoo, Michigan which presents a potential violation of the duopoly rule, but has indicated its intent to dispose of its interest herein if successful in the pending Kalamazoo proceeding.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-352

In re Applications of

WCVQ, INC.	File No. BPCT-871224KG
NICHOLS BROADCASTING CORPORATION	File No. BPCT-880301KF
MAPLE LEAF BROADCASTING LIMITED PARTNERSHIP	File No. BPCT-880301KG
LAKE CHAMPLAIN COMMUNICATIONS, INC.	File No. BPCT-880301KH
BURLINGTON CHANNEL 44, INC.	File No. BPCT-880301KI
NORTHEAST KINGDOM TV, INC.	File No. BPCT-880301KJ
BURLINGTON 44 COMPANY	File No. BPCT-880301KL
DAVID McMEEKIN	File No. BPCT-880301KM

For Construction Permit
Burlington, Vermont

HEARING DESIGNATION ORDER

Adopted: July 8, 1988; Released: August 8, 1988

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 44, Burlington, Vermont.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Each applicant proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of any application, the construction permit shall be appropriately conditioned.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each applicant, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

7. IT IS FURTHER ORDERED, That, in the event of a grant of any application, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated power in excess of 1000 kW is subject to the consent of Canada.

8. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to his notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Service Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-357

In re Applications of

SWAN BROADCASTING LIMITED	File No. BPCT-870717KQ
CRESCENT CITY BROADCASTING CORPORATION	File No. BPCT-880419KE
DELTA BROADCASTING OF LOUISIANA, LTD.	File No. BPCT-880419KF
Robert H. and Janee M. Tucker d/b/a TUCKER BROADCASTING COMPANY, LIMITED PARTNERSHIP	File No. BPCT-880419KG
TRACY LEWIS LIMITED PARTNERSHIP	File No. BPCT-880419KH
Roanoke Valley Cellular Telephone d/b/a CAJUN BROADCASTING	File No. BPCT-880419KI

For Construction Permit
New Orleans, Louisiana

HEARING DESIGNATION ORDER

Adopted: July 8, 1988 **Released: August 8, 1988**

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new television station to operate on Channel 20, New Orleans, Louisiana.

2. Swan Broadcasting Ltd. (Swan) proposes a transmitter site that is located 2.33 km from AM station WTIX, New Orleans. Each of the other applicants proposes a site that is located 1.10 km from AM station WSMB, New Orleans; 2.91 km from AM station WYLD, New Orleans; and 1.10 km from AM station KAIG, Gretna, Louisiana. Accordingly, any grant of a construction permit in this proceeding will be conditioned to assure that each AM station's radiation pattern will not be adversely affected.

3. An applicant for a new television station is required to submit, as an exhibit, a brief description, in narrative form, of its planned programming service relating to the issues of public concern facing the proposed service area (see Section IV, FCC Form 301, October, 1986). Neither Swan nor Crescent City Broadcasting Corp. (Crescent) has submitted such a statement. Accordingly, Swan and Crescent will each be required to file the appropriate exhibit with the presiding Administrative Law Judge within 30 days after this Order is released.

4. Tracy Lewis, the sole general partner of Tracy Lewis Limited Partnership (Lewis Limited), is the vice-president of Inter-Urban Broadcasting of New Orleans Partnership, licensee of stations WYLD(AM) and WYLD-FM, New Orleans. Therefore, a grant of Lewis' application may violate the Commission's multiple ownership rule (Section 73.3555(b)(1) and (2)). However, Lewis Limited has indicated that if it is the successful applicant in this proceeding, Tracy Lewis will divest all interest in, and connection with, stations WYLD(AM) and WYLD-FM. Accordingly, any grant of a construction permit to Lewis Limited will be appropriately conditioned.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. IT IS FURTHER ORDERED, That in the event that Swan Broadcasting Limited is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM station WTIX, New Orleans, Louisiana, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radi-

ation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

8. IT IS FURTHER ORDERED, That the grant of any application, except that of Swan Broadcasting Limited, in this proceeding, shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM stations WSMB and WYLD, New Orleans, and KAIG, Gretna, Louisiana, so that, if necessary, the AM stations may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM stations. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array of each station has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

9. IT IS FURTHER ORDERED, That Swan Broadcasting Limited and Crescent City Broadcasting Corp. shall each submit an amendment which contains its response to Section IV, FCC Form 301 (program service statement), to the presiding Administrative Law Judge within 30 days after this Order is released.

10. IT IS FURTHER ORDERED, That, in the event Tracy Lewis Limited Partnership is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Tracy Lewis has divested all interest in, and connection with, the licensee of stations WYLD(AM) and WYLD-FM, New Orleans, Louisiana.

11. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-353

In re Applications of

BOYD ENTERPRISES, INC.
(hereafter Boyd) File No. BPH-870504MA

GEORGE S. FLINN, JR.
(hereafter Flinn) FILE NO. BPH-870506KE

For Construction Permit for a
New FM Station on Channel 287A in
Humbolt, Tennessee

HEARING DESIGNATION ORDER

Adopted: July 11, 1988 **Released: August 8, 1988**

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Boyd is proposing to side-mount its antenna on the existing WHMT(AM) tower. Our study indicates that the operation of the existing station and the new proposal may significantly exceed the radio frequency radiation guidelines under 47 C.F.R. § 1.1307(b). Accordingly, Boyd is required to amend its application within 30 days of the date of this Order to demonstrate Boyd's compliance with the RF radiation guidelines. Boyd must submit a detailed study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with FCC Specified Guidelines for Human Exposure to Radio Frequency Radiation." This study has to include the effects of co-located AM station WHMT. In this regard, if a fence is already built that complies with the guidelines, applicant must so state and give the distance from the base of the tower to the fence. The community effect of the proposed operation and all nearby RF sources must be considered. Since the proposal may have significant environmental impact as defined by 47 C.F.R. § 1. 1307, Boyd is required to submit the environmental impact information described in 47 C.F.R. §1.1311. Accordingly, Boyd will be required to file within 30 days of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed.

3. Data submitted by the applicants indicate there would be significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accure to any of the applicants.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as ameded, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Boyd, in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Boyd shall submit the environmental assessment required by § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

7. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 29, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington D.C. 20554

MM Docket No. 88-354

In re applications of

WHITEAKER COMMUNICATIONS (hereafter Whiteaker)	File No. BPH-860812MA
MARK A PERRY (hereafter Perry)	File No. BPH-860813MW
AUDIO BROADCASTERS, INC. (hereafter ABI)	File No. BPH-860813MX

For a Construction Permit For a New FM Station in Crossville, Tennessee at Channel 273A

HEARING DESIGNATION ORDER

Adopted: July 11, 1988 **Released: August 8, 1988**

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Whiteaker*. Whiteaker partner Steve Bowman is currently employed as the sales manager of WZEZ-FM, Nashville, Tennessee and partner C. Edward Whitaker is the sales manager of WXVL-FM, Crossville, Tennessee. Both have certified that they will terminate their employment should Whitaker be granted a construction permit. To avoid any problem of cross-interests within the same market area, both partners will be ordered to resign their positions should Whiteaker's application be granted.

3. *Perry*. Section 73.1125 of the Commission's rules requires that the main studio of an FM station be located within the station's principal community contour but that on a showing of good cause may be located outside that community. Perry states in its response to Item 12, Section V-B, Form 301, that its main studio will be at a location to be determined, with no indication that the determination would be limited to sites within the principal community contour. Under these circumstances, Perry will be required to file with the presiding Administrative Law Judge, within 30 days of the release of this Order, either an amended response to the above-referenced item and/or, if applicable, a showing of good cause should it propose to locate its main studio outside the principal community contour, or an appropriate issue will be specified by the Judge.

4. Section II, Item 5 of FCC Form 301 (April 1985) requires that an appplicant specify its address (number, street, city, state) as well as the home address of each of its principals. ABI has not completed Item 5 correctly. ABI's application gives a post office box number as the residence address for James Patrick Young and Rita Lynne Young. Accordingly, ABI must submit an amendment which gives all the information required by Section II, Item 5 to the presiding Administrative Law Judge within 30 days after this Order is released.

5. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Perry have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Perry would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Whiteaker	October 7, 1986

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Perry would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That should Whiteaker's application be granted, Whiteaker partners Steve Bowman and C. Edward Whiteaker shall sever all connections with stations WZEZ and WXVL respectively, prior to the commencement of program test authority.

11. IT IS FURTHER ORDERED, That Perry file with the presiding Administrative Law Judge within 30 days of the release of this Order an amended response to Section V-B, Item 12 of its application and, if applicable, a showing of good cause should it propose to locate its main studio outside of the principal community contour.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That the October 7, 1986 amendment filed by Whiteaker IS HEREBY ACCEPTED to the extent indicted herein.

14. IT IS FURTHER ORDERED, That ABI shall submit an amendment which contains the information required by Section II, Item 5 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after release of this Order.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 29, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] An application filed by SEM, Ltd. (BPH-860813MA) was dismissed on December 18, 1987 pursuant to the applicant's own motion. An application filed by Cumberland County Broadcast Associates, Ltd. (BPH-860814MA) was dismissed on May 12, 1988 for failure to respond to the Commission's requests for a resubmission of the returned copy of its application and for an amendment containingan acceptable topographical map.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHWESTERN BELL TELEPHONE COMPANY — AAD 8-1918

Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Loop Status Verification Service

SOUTH CENTRAL BELL TELEPHONE COMPANY AND SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY — AAD 8-1925

Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Spread Spectrum Transmission Services

MEMORANDUM OPINION AND ORDER

Adopted: July 22, 1988 ; Released: Augsut 5, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On March 9, 1988, Southwestern Bell Telephone Company (SWBT) filed a petition for waiver of the Commission's *Computer II* Rules[1] to provide Loop Status Verification Service (LSVS) on an unseparated basis. On April 21, 1988, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth) filed a petition for waiver of the *Computer II* rules to provide spread spectrum alarm transmission service.[2] Both companies state that their proposed services are similar to the services that were the subject of previous waiver requests which we granted. [3] For the reasons set forth below, we grant BellSouth's request but dismiss SWBT's request because its service is not enhanced, and thus SWBT may provide the service under tariff without a waiver.

II. BACKGROUND

2. LSVS, as proposed by SWBT, is a service which would provide for the continuous testing of a telephone subscriber's access line. The company would continuously test the line for a subaudible low level tone generated by equipment located on the subscriber's premises. A break in this tone would indicate that an activating event such as fire, forced entry or a pulled alarm has occurred. At this point SWBT would notify the LSVS customer, typically an alarm company, of the condition.

3. The spread spectrum system proposed by BellSouth allows a signal to be spread over a wider bandwidth than is necessary to transmit the information. Such a transmission system offers certain advantages over more conventional transmission services. In an effort to best serve the public interest, the Commission has taken steps to allow the development of spread spectrum techniques for use in the market place by removing unnecessary regulatory barriers in order to stimulate innovation in network development.[4]

4. In the *AST Order*,[5] we concluded that the transmission portion of spread spectrum service is an "enhanced" service under the *Computer II* rules. However, we granted a waiver to Northwestern Bell, permitting it to provide spread spectrum alarm service on an unseparated basis. We stated that "in view of the significant public interest benefits that could be achieved by allowing the Bell Operating Companies (BOCs) to provide the transmission component of the AST alarm service on an unseparated basis, we grant herein a waiver of the *Computer II* rules which will allow them to do so".[6] We conditioned the waiver upon these three requirements: (1) the spread spectrum channel service must be unbundled from the scanning and routing functions; (2) the spread spectrum channel service must be offered under tariff; (3) the costs associated with the provision of the scanning and routing functions must be removed from the regulated accounts and recorded in "below the line" non-regulated accounts.

III. SWBT'S PETITION

5. The LSVS service proposed by SWBT would be provided by an additional network component ancillary to the central office switch. The network component would scan the subscriber's line seeking a subaudible low level continuous tone generated by the subscriber's customer premises equipment (CPE). The signal that would be received at the SWBT network component would validate the line's continuity. In the event that a loss of tone is detected, SWBT would notify the LSVS customer. Such notification would provide the phone number associated with the condition. The notification would be transmitted using ASCII[7] code over a switched service line from the central detection of the condition to the LSVS customer's designated reporting location.

6. SWBT cites the *AST Order* and the *Mountain States Order* as precedent for a grant of its waiver request, claiming that the services considered therein are similar to its proposed LSVS service. SWBT states that it will conform to the conditions imposed by the Commission in those orders by (1) offering the scanning and routing functions unbundled from the local access loop over which the continuous tone is transmitted; (2) offering the local access loop over which the tone is transmitted under tariff; and (3) removing all costs associated with the LSVS scanning and routing functions from regulated accounts and recording them in "below the line" non-regulated accounts.

7. SWBT asserts that the provision of LSVS is in the public interest because (1) it will provide greater assurance of continuity of telephone lines that are heavily relied upon for safety and security reasons; (2) it may be used to scan health monitoring equipment telephone connections as well as other critical telephone connections; and (3) it represents an additional use of the network and an additional service to consumers. SWBT contends fur-

ther that the potential for anticompetitive practices is minimal. SWBT argues that the service is procompetitive because (1) it has the potential to expand the market for alarm services; (2) there would be little incentive for SWBT to discriminate among alarm companies since all alarm companies can obtain LSVS from central offices so equipped at the standard rate; and (3) since the additional network component needed to provide LSVS can be purchased at minimal cost, SWBT will have little incentive to discriminate among competing network component manufacturers.[8]

IV. COMMENTS

8. Comments on SWBT's petition were filed by the Florida Public Service Commission (FPSC), MCI Telecommunications Corporation (MCI) and by Mountain States Telephone and Telegraph Company (MTN), Northwestern Bell Telephone and Telegraph Company (NWB) and Pacific Northwest Bell Telephone Company (PNB) (collectively, U S West).[9] SWBT filed reply comments.

9. FPSC opposes SWBT's waiver request on several grounds. First, it argues that the proposed LSVS is essentially a monopoly service and therefore should not be treated as an unregulated enhanced service. FPSC contends that the proposed service is a monopoly because there are no other potential vendors. There are no other potential vendors, it asserts, because only the local exchange carrier (LEC) has access to the central office end of the subscriber loop. FPSC argues that the proposed LSVS is similar to a service that is offered in Florida on a regulated tariffed basis. Second, FPSC questions the current policy of permitting *Computer II* waivers under a "me- too" approach. FPSC argues that since the implementation of *Computer III* [10] is currently underway, the Commission should rely completely on the policies of *Computer III* and not continue to allow waivers based upon *Computer II*. Finally, FPSC states that the *Mountain States Order* cited by SWBT predates the *Computer III* proceeding and was based upon different technology.

10. MCI opposes SWBT's waiver request and argues that SWBT should have submitted a comparably efficient interconnection (CEI) plan under *Computer III*. MCI states that the waiver proposal is vague and that SWBT fails to address how the service would be provided in an Open Network Architecture (ONA) environment. MCI then states that under the "me-too" exception, the proposed service must be identical to a previous waiver grant and that SWBT's proposal is not identical to the services involved in the *Mountain States Order* and the *AST Order*. In those cases, it states, the companies were proposing to incorporate spread spectrum on telephone lines, whereas SWBT's LSVS would use a different technology to carry the information to alarm companies and would monitor subscriber lines from the central office switch. The fact that LSVS would be offered to alarm companies, it argues, does not make it identical to the other services.

11. MCI also asserts that various aspects of SWBT's LSVS proposal are ambiguous. First, MCI states that SWBT's pricing proposal is unclear as to what the estimated monthly charge includes and whether the rates will be usage-based on the number of alarm notifications provided. MCI argues that the petition is vague regarding the costs associated with transmitting information to the LSVS customer and whether tariff rates would apply. MCI then questions how SWBT would cover the costs of providing customer notification if a toll charge would normally be associated with switched calls to the LSVS customer's location. Furthermore, it argues that it is unclear how customer notification would be provided in the event that the customer is located outside of the serving local access transport area (LATA). MCI states that under the Modified Final Judgement, SWBT would be prohibited from notifying such a customer using the switched service it proposes. MCI also asserts that since LSVS has potential application in monitoring the use of voice-grade WATS lines as well as residential subscriber lines, SWBT should be required to clarify whether the service will be available for the monitoring of all subscriber lines when it is technically feasible. MCI also argues that since SWBT has stated that it intends to colocate equipment dedicated to a limited class of customers (LSVS subscribers) in its central office, SWBT should clarify whether it will allow other companies to place their own equipment in its central offices. MCI contends that because SWBT's proposal raises but fails to address these issues, the Commission should require the company to resubmit its waiver petition as a CEI plan.

12. U S West supports SWBT's proposal and states that it submits its comments for the purpose of clarifying its own LSVS offerings since SWBT refers to the LSVS offerings of MTN and NWB in its petition. U S West states that MTN and NWB offer a scanning and routing service called VersaNet to alarm companies. It emphasizes that this service includes a code conversion from FSK to ASCII which is necessary to switch the spread spectrum signal that is used to indicate alarm status and that this service is treated as enhanced under *Computer II*. It states that PNB offers a similar service under state tariff and that the service is identical to MTN and NWB's service with the exception that there is no code conversion. The scanning and routing functions are therefore treated as a basic service, subject to state regulation and offered under tariff. U S West questions whether SWBT's service includes code conversion and contends that if it does not, a waiver is not necessary.

13. In reply, SWBT states that the Bureau must determine whether LSVS is an enhanced or a basic service. SWBT contends that in the *AST Order* the Bureau found that spread spectrum service was enhanced because of the scanning function and the code and protocol conversion features of the service. SWBT argues that under these standards, its proposed service is "less enhanced" than spread spectrum because LSVS technology does not require code and protocol conversion. SWBT argues that if the Bureau determines LSVS is an enhanced service then its waiver request should be granted because of the public utility of a low cost alarm monitoring service and because the risk of any anti-competitive activity is minimal.

14. SWBT also responds to FPSC and MCI's arguments that SWBT should be required to file a CEI plan and that LSVS is not identical to other services that were the subject of previously granted waiver requests. SWBT maintains that although the technology for spread spectrum and LSVS is different, the line monitoring and continuity services are identical. The difference in technology is a minor distinction, it contends, that should not suffice to require the filing of a CEI plan. SWBT claims it was justified in filing a *Computer II* waiver request rather than a CEI plan because in the *AST Order*, the Bureau stated

that it would consider "similar waiver requests by other BOCs"[11] and that LSVS is a sufficiently similar service to spread spectrum to permit it to file a waiver request.

15. In response to MCI's concerns regarding pricing, SWBT argues that the anticipated pricing of an enhanced service is not relevant under *Computer III* because *Computer III* is concerned with the price of the underlying basic service. SWBT states that there are no competitive concerns with its proposed offering because the underlying basic services would be available to all on an equal and unbundled basis. Regarding its estimated cost of5 to10 per line per month, SWBT states that it is presently conducting cost studies to determine the actual price for LSVS offerings and therefore it cannot be more definite regarding the price. In addition, SWBT compares its projected price with the projected prices of other similar service providers and argues that its projected price is similar. SWBT clarifies that its monthly rate covers the cost per subscriber line for SWBT to monitor the subscriber's line and notify the alarm company if the line becomes inoperative. SWBT states that there will be no additional charges based on the number of notifications. Finally, SWBT states, in response to MCI's questions regarding the adaptability of LSVS to services other than alarm services, that it will initially offer LSVS in conjunction with alarm services.

V. BELLSOUTH'S PETITION

16. BellSouth's petition proposes to provide a service to alarm companies that consists of the following components: 1) a remote module located on the customer's premises; 2) a network component and 3) a remote module located on the alarm company's premises. The remote module located at the customer's premises would continuously emit a spread signal over ordinary telephone loops to a BOC central office. The transmissions would not interfere with the simultaneous use of the telephone line for voice or data- over-voice services or with the use of Frequency Shift Keying (FSK)-based modems. BellSouth will unbundle the loop transmission service from the signaling modules and from the scanning and routing functions and offer it under tariff. The network component would be installed by BellSouth at its central offices. The network component demodulates the spread spectrum signal received from the remote premises module and converts it to ASCII code so it can be transmitted over the public switched network to a predesignated alarm service company for processing. The network component also performs a "scanning" function to detect the triggering of an alarm. The remote module, located on the alarm company premises, monitors the signals emanating from the remote module at the customer's premises. BellSouth states that it will comply with all of the conditions set forth in the *AST Order* upon grant of the waiver. No one filed pleadings in response to BellSouth's petition.

VI. DISCUSSION

17. We find that the LSVS service proposed by SWBT is a basic, not enhanced service, and thus no waiver of our rules is required if SWBT desires to offer it.[12] In the *Computer II Final Decision* the Commission distinguished between basic and enhanced services in adopting a regulatory framework for computer processing applications offered over common carrier transmission facilities. The Commission defined "basic service" as the provision of "pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information."[13] Section 64.702(a) of the Commission's Rules, defines "enhanced service[s]" as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.[14]

18. Under these definitions, SWBT's proposed service is a basic service and should therefore be offered under tariff.[15] The proposed service involves a scanning and routing function as well as the transmission of information. The transmitted information will not be altered or restructured, and there is no subscriber interaction with stored information. Moreover, unlike the service involved in the *AST Order*, there is no code and protocol conversion involved in the proposed LSVS service. In the *AST Order*, it was our intention to emphasize the code and protocol conversion functions of the proposed service in concluding that the service was enhanced. Scanning and routing, in some situations, are elemental functions performed by any local exchange end office switch and may properly be considered a part of basic service. Furthermore, we noted in the *AST Order* that the basic/enhanced issue presented there was a close one, and that the furnishing of more detailed information about the technology might yield a different result.[16] Therefore, in a case such as this, where the technology involved differs from that of the *AST Order* because it does not involve code conversion, the *AST Order* is not controlling. To the contrary, we find that this is a basic service of great potential use to alarm companies.

19. BellSouth's request for a waiver to provide spread spectrum service proposes the code and protocol conversion features which we have found to be enhanced. The service BellSouth seeks to offer is identical to the service involved in the *AST Order* and BellSouth has stated that it would offer the service under the same terms and conditions set forth in the *AST Order*.[17] We therefore grant BellSouth a waiver of the *Computer II* rules and permit it to provide spread spectrum alarm services under the same terms and conditions set forth in the *AST Order*.

VII. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the petition for waiver of South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company IS GRANTED, subject to the conditions set forth above.

21. IT IS FURTHER ORDERED, that the petition for waiver filed by Southwestern Bell Telephone Company IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. Section 64.702. *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer II*), 77 FCC 2d 384 (1980) (*Final Decision*), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff' d sub nom.* Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *second further reconsideration*, FCC 84-190 (released May 4, 1984).

[2] BellSouth filed an erratum to its petition on May 2, 1988. The erratum clarifies that if a waiver is granted, the loop transmission service would be unbundled from the signaling modules and from the scanning and routing functions and offered under tariff.

[3] SWBT and BellSouth cite Applied Spectrum Technologies, Inc., Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Status of "Spread Spectrum" Transmission Services, ENF 85-6, Mimeo No. 5532 (released July 3, 1985) (*AST Order*) and Mountain States Telephone and Telegraph Company, Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Spread Spectrum Alarm Services, AAD 6-1104, Mimeo No. 3515 (released April 2, 1986) (*Mountain States Order*). In addition, BellSouth cites The Ameritech Operating Companies, Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Spread Spectrum Alarm Service, AAD 6-1325, Mimeo No. 3768 (released April 15, 1986) (*Ameritech Order*).

[4] *See generally AST Order* at paragraph 4.

[5] *See* note 3, *supra*.

[6] *AST Order*, para. 3.

[7] ASCII is the American Standard Code for Information Interchange which was developed jointly by equipment manufacturers and users, and adopted by the International Standards Organization and the American National Standards Institute. It is a seven bit code which facilitates the interchange of data between machines and systems in teleprocessing environments.

[8] SWBT Petition at 7.

[9] By *Public Notice*, "Southwestern Bell *See* ks Waiver of Section 64.702 of the Commission's Rules to Provide Loop Status Verification Service", 3 FCC Rcd 2182 (1988), we invited comments on SWBT's petition. Because BellSouth proposed to provide spread spectrum service identical to that previously authorized, we did not seek public comment. *See AST Order*, para.33 n.28.

[10] *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987), further recon., 3 FCC Rcd 1135 (1988); 2 FCC Rcd 3072 (1987), (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988). In the Computer III Phase I Order, the Commission stated that it may be appropriate for a BOC to seek a waiver of the Computer III safeguards if it is seeking to provide an enhanced service identical to a service for which another BOC received a waiver of the Computer II rules. 2 FCC Rcd at 3067 n.161.

[11] AST *Order*, para.33 n.28.

[12] FPSC's objection to the use of the "me-too" procedure (see note 10, supra) is essentially a request for reconsideration of the Commission's *Computer III* policies, and is not properly raised in this proceeding.

[13] *Computer II Final Decision*, 77 FCC 2d at 420.

[14] 47 C.F.R. Sec. 64.702 (a).

[15] In view of this decision, we need not resolve the issues raised by MCI (see para. 11, supra) because they either are premised on the classification of LSVS as an enhanced service, or involve pricing matters which should be addressed before the state regulatory agencies.

[16] AST *Order*, para. 18.

[17] *See* note 10, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED — File No. I-T-C-88-147

Application for authority to acquire and operate facilities for service between Hawaii and Western Samoa

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 27, 1988 **Released: August 5, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application, filed on June 3, 1988 by GTE Hawaiian Telephone Company Incorporated (GTE Hawaiian Tel), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite facilities for direct service to Western Samoa. The application was placed on public notice on June 22, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Western Samoa by GTE Hawaiian Tel.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-147 IS GRANTED, and GTE Hawaiian Tel is authorized to:

a. lease from Comsat and operate two satellite voice-grade half-circuits between an appropriate earth station in Hawaii and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and an earth station in Western Samoa, furnished by GTE Hawaiian Tel's correspondent in Western Samoa; and

b. use said facilities to provide GTE Hawaiian Tel's regularly authorized services between Hawaii and Western Samoa.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between GTE Hawaiian Tel and its correspondent in Western Samoa, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its adopted date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-88-150

Application for authority to acquire and operate facilities for service to Korea

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 27, 1988 **Released: August 5, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application, filed on June 7, 1988 by MCI Telecommunications Corporation (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct service between the U.S. and the Republic of Korea (Korea). The application was placed on public notice on June 24, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Korea by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-150 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 60 satellite voice-grade half-circuits between its Yacolt, Washington earth station and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and an earth station in Korea, furnished by MCI's correspondent in Korea;

b. own and operate 60 voice-grade circuits in the Yacolt, Washington earth station;

c. own and operate 60 voice-grade circuits between the Yacolt, Washington earth station and MCI's office in Dominguez Hills, California; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice service, between the U.S. and Korea and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Korea, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its adopted date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b), RM-5380
Table of Allotments,
FM Broadcast Stations.
(Hastings, Florida)

MEMORANDUM OPINION AND ORDER

Adopted: June 15, 1988; Released: August 8, 1988

By the Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration filed by Central Radio Communications, Inc. (Central Radio) directed against the staff action of November 20, 1986, which returned its petition for rule making proposing the allotment of Channel 227A to Hastings, Florida.[1] General Broadcasting of Florida, Inc., licensee of FM Station WHLY, Leesburg, Florida, filed an Opposition. Blair Broadcasting Corporation of Florida, former licensee of Station WFLZ-FM (formerly Station WPDS-FM), Tampa, Florida and Folkston Broadcasters, Inc., proponent for Channel 287A at Folkston, Georgia, filed comments.

BACKGROUND

2. Central Radio filed its petition for rule making in March 20, 1986. Thereafter, on November 20, 1986, the staff returned the petition for rule making due to short-spacings with both Station WFLZ-FM, Tampa, Florida and Station WMMZ-FM, Ocala, Florida. The short-spacing with respect to Station WFLZ-FM was due to the 16-kilometer buffer zone previously afforded Class C FM stations in order to implement BC Docket No. 80-90. The short-spacing with Station WMMZ-FM was due to the fact that prior to March 2, 1987, such a Class C station was protected as a full Class C station even though it was operating with Class C1 facilities.

3. In its petition for reconsideration, Central Radio addresses both of these short-spacings. In regard to Station WFLZ-FM, Central Radio notes that at the time it filed its petition for rule making, Station WFLZ-FM had been inadvertently reclassified as a Class C1 station. As such, the 16-kilometer buffer zone was not reflected in the FM data base.[2] This error was corrected and the Central Radio petition for rule making was returned. Subseqently, on January 7, 1987, Station WFLZ-FM filed the necessary application to maintain Class C status (File No. BPH-870107IH). The site specified in that application could accommodate a Channel 227A allotment at Hastings. In view of the subsequent Station WFLZ-FM application and the fact its Hastings proposal was consistent with the FM data base when filed, Central Radio requests that a Channel 227A allotment at Hastings be proposed contingent on the licensing of the Class C facilities at Station WFLZ-FM. In regard to Station WMMZ-FM, Central Radio refers to an application granted on December 30, 1983 (File No. BPH-830511AB) which resulted in Station WMMZ-FM being authorized Class C1 facilities. As correctly noted by Central Radio, the proposed Hastings allotment complies with the minimum spacing requirements when Station WMMZ-FM is considered as a Class C1 station. However, on August 26, 1986, the new licensee of Station WMMZ-FM filed an application to specify full Class C facilities (File No. BPH-860826IL). This application was granted on May 7, 1987. In this connection, Central Radio contends that such an upgrade in class should have been effectuated through rule making and not an application. Therefore, Central Radio argues that its proposal is not short-spaced to Station WMMZ-FM.

4. In its Opposition, General Broadcasting Company of Florida, Inc. argues that the Central Radio petition for rule making is an untimely counterproposal to its own counterproposal to allot Channel 227A to Ponte Vedra Beach in MM Docket No. 85-376. It also argues that the Hasting proposal would be short-spaced to Station WMMZ-FM. Blair Broadcasting Corporation of Florida notes the short-spacing with Station WFLZ-FM at both its existing and proposed site. As such, any Hastings allotment on Channel 227A would require a site restriction. The comments by Folkston Broadcasting, Inc. address a proposed channel allotment at Folkston, Georgia in MM Docket No. 86-294 which are not germane to this proceeding.

5. After careful consideration of this matter, we are of the view that the earlier staff determinations with respect to short-spacings with Station WMMZ-FM and Station WFLZ-FM were correct. We will discuss the reasons for this decision below.

6. At the time Central Radio filed its petition for rule making, Station WFLZ-FM was, in fact, a Class C station and entitled to a 16-kilometer buffer zone. The Hastings proposal would have to protect this buffer zone. *See Public Notice* released April 9, 1985, 51 Fed. Reg. 26009, published July 18, 1986. In situations where an FM proposal would not protect the 16-kilometer buffer zone, these petitions for rule making were routinely returned by staff letter. These petitions could be resubmitted after the March 2, 1987 expiration date of the buffer zone. The only exception to this policy was the situation where the Class C FM station specifically waived its buffer zone protection in a letter accompanying the rule making petition.[3] *See e. g. Lomira and Ripon, Wisconsin*, 2 FCC Rcd. 1936 (1987). Central Radio did not submit such a letter. We also note that at the time Central Radio filed its petition for rule making and its petition for reconsideration, there was no application on file by Station WFLZ-FM which would eliminate the short-spacing. We do not perceive any justification for processing this or a similar proposal on an expectation that an appropriate application will be filed. Retroactively considering its earlier proposal for Channel 227A at Hastings would be unfair to other petitioners and not conducive to the efficient transaction of Commission business.

7. The fact that Station WMMZ-FM had been granted a construction permit on April 16, 1986 which specified Class C1 facilities (File No. BMPH- 851031IB) did not preclude the licensee from filing a subsequent application to maintain Class C status prior to the March 2, 1987 deadline. In this situation, Station WMMZ-FM filed such an application on August 26, 1986 and this application was granted on May 7, 1987 (File No. BPH-860826IL).

There is nothing in BC Docket No. 80-90 revising the FM technical standards, *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Assignments*, 94 FCC 2d 152 (1983) or the *Public Notice*, *supra*, which would suggest that a station filing an earlier application specifying Class C1 facilities forfeits its right to file an application specifying minimum Class C facilities prior to March 2, 1987. In the meantime, Class C stations, regardless of facilities, were protected as Class C stations with a 16 kilometer buffer zone. Inasmuch as the Channel 227A proposal for Hastings was short-spaced to Station WMMZ-FM as a protected Class C station and the WMMZ-FM application filed prior to March 2, 1987, the action returning this Hastings proposal was correct.

8. According, the aforementioned Petition for Reconsideration filed by Central Radio Communications, Inc. IS HEREBY DENIED.

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Public Notice was given on January 30, 1987, Report No. 1641.

[2] In order to avoid an automatic downgrading in class, Class C FM stations operating with facilities below the prescribed minimum facilities were afforded until March 2, 1987, the opportunity to file an application specifying minimum Class C facilities. The 16-kilometer buffer zone protection was in effect for these stations through March 2, 1987 to facilitate the filing of the application.

[3] While it is true that the Commission's FM database incorrectly showed Station WFLJ-FM as a Class C1 station without the 16 kilometer buffer zone to which it was entitled, this error does not constitute a basis for creating an exception to our policy.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-270

In the Matter of

Amendment of Section 73.202(b), RM-5253
Table of Allotments,
FM Broadcast Stations.
(Ocilla, Georgia)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 8, 1988

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration the petition for reconsideration filed by Albert E. Harper (Harper) of the *Report and Order* in this proceeding, 2 FCC Rcd 4241 (1987). The *Report and Order* allotted Channel 253A to Ocilla, Georgia, as the community's second local FM service, at the request of A&M Broadcasting (A&M), and dismissed Harper's late-filed counterproposal seeking the allotment of Channel 253A to Pearson, Georgia. Osceola Communications, Inc. (Osceola), an applicant for Channel 253A at Ocilla, filed an opposition to the petition for reconsideration to which Harper responded. Harper also filed a Motion for Stay of the filing window for the Ocilla channel.

2. Harper contends that the decision not to accept his late-filed counterproposal was arbitrary and unreasonable since the *Report and Order* failed to mention the justification which he provided for the lateness, an explanation of why the justification was insufficient, or a discussion of the merits of his proposal. He argues that the Commission failed to recognize that his pleading was timely prepared and served on the petitioner, stating that it is immaterial to the conduct of the proceeding whether it was filed with the Commission by the comment deadline or a day later. Harper reiterates that his failure to file the counterproposal in a timely manner was inadvertent but that the date for reply comments had not yet passed and thus there was little possibility of prejudice to any party or the public interest. He submits that the public interest required consideration of his proposal since it sought the allotment of a first local aural service as opposed to the proposed third aural service at Ocilla. Harper notes that Channel 253A was allotted to Ocilla based on the late-filed expression of continuing interest by the petitioner. However, he argues that the Commission made no finding of good cause for the late-filing by the petitioner.

3. Osceola contends that Harper has failed to state any substantial reason to justify granting its petition for reconsideration. He notes that a period of almost two months elapsed between the release of the *Notice of Proposed Rule Making* and the date by which interested parties were to file comments and/or counterproposals. However, according to Osceola, Harper has given no reason for his lateness beyond the occurrence of unexplained "intervening events." It contends that the acceptance of late-filed counterproposals would disrupt the orderly administration of the Commission's business since the proposal would place entirely new issues and problems before the agency, thus adding to the time which must be spent to consider a proposal. Osceola differentiates the late-filing of the petitioner, stating that it was merely a reaffirmation of the status quo, adding neither new information or new issues. Therefore, it contends that the acceptance of the late-filed comments did not disturb the Commission's processes but simply added the required statement of continuing interest so that the process could be completed. Osceola states that it has now filed an application for the channel at Ocilla and believes it contrary to the public interest to alter the decision, particularly in this instance, where Harper has failed to show good cause.

4. Harper, in response, contends that the Ocilla proceeding was rendered "dead" in light of the fact that there was no timely expression of continuing interest in use of the channel. Thus, according to Harper, the Commission had before it only the unopposed late-filed counterproposal which should have been considered. He states that similarly situated parties are entitled to comparable treatment. Therefore, in his view, the Commission cannot accept and use the later-filed comments of the petitioner to revive a "dead" proposal while simultaneously rejecting the earlier-filed counterproposal.

DISCUSSION

5. We believe that Harper has misconstrued the Commission's rules and policy concerning the acceptance of late-filed pleadings and counterproposals in allotment proceedings. Section 1.420(d) of the Commission's Rules, and the Appendix to the Notices of Proposed Rule Making, states that counterproposals shall be considered only if advanced in initial comments and that they will not be considered if filed in reply comments. Section 1.3 of the Rules provides that the Commission's rules may be waived if good cause for doing so is shown. Harper appears to argue that the only determining factor in whether to waive a rule is the merit of the comment itself, regardless of the reason for the lateness. However, the Commission, in determining whether good cause has been shown, must consider both the reason for the lateness and the significance of the information contained in the late-filing. Harper's sole basis for a waiver of the comment deadline is that "[d]ue to intervening events, the formal filing with the Secretary of the Commission was inadvertently not completed prior to the close of his office at 5:30 p.m. on that date" with no explanation of what the intervening events were which caused the late-filing. We find that Harper has not provided a sufficient justification as to why he could not have timely filed his counterproposal. *See Santa Isabel, Puerto Rico*, 2 FCC Rcd 3454 (1987), review den., 3 FCC Rcd 2336 (1988), recon. pending. We also find that the desire to allot a channel to Pearson, Georgia, is not of sufficient significance as to warrant a waiver of the filing deadline. While the provision of a first local FM service to Pearson is worthy in itself, it is not of such overriding significance as to warrant the acceptance of Harper's untimely filed counterproposal. Harper's pleading does not present evidence that the public interest would be harmed by the allotment of a second local FM channel to Ocilla.

Rather, it argues that the public interest could be better served by allotting the channel to Pearson. However, Harper or any other interested party could have filed such a request either prior to the receipt A&M's request for the Ocilla allotment or as a timely filed counterproposal.

6. We also disagree with Harper that his late-filed counterproposal and the petitioner's late-filed expression of continuing interest should have either both been accepted or not accepted for consideration. Had Harper's counterproposal been timely filed or its waiver request presented a good cause for its grant, the Commission may not have accepted petitioner's late-filed expression of interest. The Commission's policy of liberally accepting late- filed expressions of interest generally applies only in uncontested proceedings. *See Santa Isabel, Puerto Rico*, 51 FR 6119, February 20, 1986. However, having first determined that Harper's counterproposal was not acceptable for consideration we accepted petitioner's late-filed comments for the sole purpose of expressing continuing interest. *See Kingsville, Texas*, 2 FCC Rcd 6789 (1987), *Crosby, Minnesota*, 2 FCC Rcd 6047 (1987) and *Roland and Heavener, Oklahoma*, 3 FCC Rcd 2684 (1988). Nevertheless, recognizing Harper's continuing interest in providing Pearson with its first local FM service, we have determined that an alternate channel can be allotted. We have accepted his counterproposal as a new request for rule making and shall issue a separate Notice of Proposed Rule Making proposing the allotment of Channel 270A to Pearson, Georgia. Therefore, Harper is in the same position as a result of our action as he would be if we were to accept his argument that both Harper's and A&M's proposals were equally unacceptable.

7. Accordingly, based on the above discussion, IT IS ORDERED that the Petition for Reconsideration of Albert E. Harper IS GRANTED to the extent indicated above and IS DENIED in all other respects. IT IS FURTHER ORDERED, that the Motion for Stay filed by Albert E. Harper IS DISMISSED AS MOOT.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-298

In re Applications of

ARMANDO GARCIA — File No. BPH-840629IA
Guadalupe, California

REIMER BROADCASTING LIMITED — File No. BPH-840629II
Guadalupe, California

For Construction permit for a new FM Station

ORDER

Adopted: July 26, 1988; Released: August 8, 1988

By the Commission:

1. The Commission has under consideration a Review Board Decision, *Armando Garcia*, 3 FCC Rcd 1065 (1988); an Application for Review filed April 7, 1988 by Reimer Broadcasting Limited; and an Opposition filed April 27, 1988 by Armando Garcia.

2. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.115(g) the Application for Review filed April 7, 1988 by Reimer Broadcasting Limited IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-358

In re Applications of

TEXAS COMMUNICATIONS LIMITED PARTNERSHIP (hereafter Texas, Ltd.)	File No. BPH-870710MJ
JUAN JOSE GONZALES (hereafter Gonzales)	File No. BPH-870710MW
BEAUMONT SKYWAVE, INC. (hereafter Skywave)	File No. BPH-870710NA
CHM BROADCASTING (hereafter CHM)	File No. BPH-870710NC
BEAUMONT RADIO LIMITED PARTNERSHIP (hereafter Beaumont Radio)	File No. BPH-870710NR
P. K. L. PARTNERSHIP (hereafter P.K.L.)	File No. BPH-870709ME (DISMISSED HEREIN)

For a Construction Permit for a
New FM Station on Channel 273C2 in
Beaumont, Texas

HEARING DESIGNATION ORDER

Adopted: July 12, 1988; Released: August 8, 1988

By the Chief, *Audio Services Division:*

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* The instant application filed by P.K.L. was returned on January 15, 1988 by the Chief, FM Branch as insufficient for tender because it did not include a full scale transmitter site map. A petition was filed on March 16, 1988 requesting: (i) reconsideration of the Chief's action; (ii) acceptance of a curative amendment and (iii) *nunc pro tunc* reinstatement of P.K.L.'s application, as amended.

3. By means of the *Report and Order* in Docket 84-750, 50 Fed. Reg. 19936 (May 13, 1985), the Commission established as a prerequisite of tenderability (*see* paragraph 23 and Appendix D) that commercial FM broadcast applications include transmitter site maps in accordance with our *Public Notice*, Mimeo 3693, released April 5, 1985, and called for by FCC Form 301, Section V-B, Item 13. The *Public Notice*, 51 Fed. Reg. 45945(December 23, 1986), clarifies the requirement found in FCC Form 301 that applicants submit a 7.5 minute series U.S. Geological Survey topographic quadrangle map which marks the transmitter site. So that the Commission's staff can verify the accuracy of the geographic coordinates of the transmitter location and other engineering parameters, the *Public Notice* specifies certain technical requirements the map must satisfy for the application to be tenderable.

4. One option the applicant has, in lieu of submitting the entire map, is to provide a full scale section of the 7.5 minute topographical map enclosing the transmitter site. This map section is entirely acceptable as long as it complies with the precise requirements of the *Public Notice*. In other words, it must be full-scale and accompanied by a reduced copy of the entire quadrangle map. Without a full scale map section, the staff is unable to verify, with the requisite degree of confidence and reliability, the transmitter site coordinates and the ground elevation of the transmitter site. *See* paragraph 4(b) of Appendix D, *Report and Order, supra.*

5. Under the "window" processing system for commercial FM construction permit applications adopted in the *Report and Order, supra*, any error in or omission from key portions of an application as of the close of the pertinent filing window requires the return of that application as not substantially complete or insufficient for tender. *Id.* at paragraphs 23 and 31. In other words, applicants may perfect the tenderability of their applications and retain "window" status *only* by an amendment filed by the close of the applicable window. Therefore, to properly lie, a petition for reconsideration of a finding of untenderability must demonstrate that such finding concerning the application *as originally filed* was erroneous. *See* the *Report and Order, supra*, and 47 C.F.R. §1.106(d)(2).

6. The instant petition concedes that quadrangle maps were omitted from the application and attributes this to the "mistake, neglect and inadvertence of P.K.L.'s engineering firm." This argument in no way demonstrates that P.K.L.'s application met all tenderability requirements by the close of the window for channel 273C2.

7. P.K.L.'s failure to submit a full scale map resulted in its application properly being found not sufficient for tender. The Commission thus made no error in returning that application. Accordingly, the petition for reconsideration filed by P.K.L. is hereby DENIED.[1]

8. *Skywave.* Information provided by Skywave indicates that it's proposed site lies in a floodplain. Consequently, we are concerned that Skywave may have failed to comply with the newly revised environmental criteria set forth in the *Report and Order* in Gen Docket No. 79-163, 51 Fed. Reg. 14999 (1986). Under the newly revised rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in the newly added 47 C.F.R. § 1.1307. If the applications are subject to environmental processing under § 1.1307 criteria, the applicants must then submit an Environmental Assessment (EA) containing the informa-

tion delineated in the newly revised 47 C.F.R. § 1.1311. Since the proposal of Skywave may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, Skywave is required to submit environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Skywave will be required to file within 30 days of the release of this Order an Environmental Assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the remaining phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corporation.*, 71 FCC 2d 229 (1979), *recon. denied sub nom., Old Pueblo Broadcasting Corporation*, 83 FCC 2d 337 (1980).

9. *Beaumont Radio*. Ronald Mathis, general partner of Beaumont Radio, has indicated that he is an "employee" at KHYS (FM) and KALO (AM), Port Arthur, Texas. Mr. Mathis states in the instant application that he will resign his position at KHYS (FM) and KALO (AM) upon grant of the instant application. Accordingly, in the event of a grant of Beaumont Radio's application, Ronald Mathis will be ordered to sever all connections with KHYS (FM) and KALO (AM) prior to the commencement of program test authority.

10. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and Texas, Ltd., Gonzales, CHM, and Beaumont Radio have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by these applicants would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

11. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Skywave	September 14, 1987; January 13, 1988

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with regard to Skywave in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301- 1319 of the Commission's Rules.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Texas, Ltd., Gonzales, CHM, and Beaumont Radio would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That the petition for reconsideration filed by P.K.L. IS HEREBY DENIED.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Skywave shall submit the environmental assessment required by § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

16. IT IS FURTHER ORDERED, That, in the event of a grant of Beaumont Radio's application, Ronald Mathis shall sever all connections with KHYS (FM) and KALO (AM), Port Arthur, Texas prior to the commencement of program test authority.

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Skywave

19. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

20. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **August 29, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] In order to better utilize the Bureau's limited processing staff resources, the Commission has approved staff consideration and disposition of tenderability and acceptability matters in the context of the relevant hearing designation order rather than in a separate action document. *Teton Broadcasting*, 1 FCC Rcd 518, 521 n.5 (1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-359

In re Applications of

LAWRENCE L. BUSH, JR. (hereafter Bush)	File No. BPH-870325KC
SPANISH AURAL SERVICES COMPANY (hereafter SASC)	File No. BPH-870331MY
ROBERT W. PRIKRYL AND JOHN R. HANNA d/b/a PRIKRYL - HANNA PARTNERSHIP (hereafter P&H)	File No. BPH-870331OF
SMITH MEDIA, INC. (herafter Smith)	File No. BPH-870331OI
CLIFTON COMMUNICATIONS (herafter Workman)	File No. BPH-870331MU (PREVIOUSLY DISMISSED)

For a Construction Permit for a
New FM Station on Channel 277A (103. MHz),
Clifton, Texas

HEARING DESIGNATION ORDER

Adopted: July 12, 1988 **Released: August 8, 1988**

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Workman*. Workman's application was returned as unacceptable for filing on November 9, 1987, after preliminary study revealed that the geographic coordinates specified in the application did not match the coordinates plotted on the 7.5 minute U.S.G.S. topographic site map. On December 10, 1987, Workman timely filed a petition for reconsideration which included an amendment portraying the correctly plotted coordinates of the transmitter site. Workman's petition contends that the coordinate "error came about thru [sic] the failure on the part of [the applicant] to doublecheck the actual site with the coordinates listed on the actual completed site map."

3. In order to be favorably considered, a petition for reconsideration must establish that the action taken by the Commission or designated authority from which reconsideration is sought involved findings of fact or conclusions of law which were erroneous. *See* 47 C.F.R. § 1.106(d)(2). Workman's petition fails to establish that such errors were made. Rather, the instant petition relies upon the submission of an amendment aimed at correcting the deficiency for which the original application was properly returned. Because Workman fails to meet the criteria necessary for favorable action, his petition for reconsideration must be denied. *See , e. g., Ann D. Genthner*, 2 FCC Rcd 399 (1986).

4. *Prikryl - Hanna*. In its response to Section II, Item 7, FCC Form 301, Prikryl-Hanna reported that its principal, John Hanna, is presently employed as General Manager of radio station KCLW(AM), Hamilton, Texas, which is located approximately 30 miles southwest of the instant city of license. The applicant further pledges that Mr. Hanna will terminate his relationship with KCLW(AM) prior to grant of the instant license. Accordingly, an appropriate condition will be specified below.

5. *Smith*. In his response to FCC Form 301, Section II, Items 6 and 7, Smith has indicated that he is 50% shareholder, director, and officer of Progressive Media Communications, Inc., whose sole media holding is the *Clifton Record*, a weekly newspaper serving Clifton, Texas. Smith has further pledged that he will divest his interest and resign from his positions with that corporation upon grant of the instant construction permit. Accordingly, an appropriate condition will be specified below.

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and from the following applicants have been unsuccessful. Accordingly, since no determination has been received that the towers proposed by the applicant below would not constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

APPLICANT: SASC.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: SASC.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That for the reasons set forth in paragraphs 2-3 hereinabove, Workman's petition for reconsideration IS DENIED.

11. IT IS FURTHER ORDERED, That in the event of a grant of the Prikryl-Hanna application, the construction permit shall be conditioned as follows:

Prior to the commencement of program test authorization, the permittee shall certify to the Commission that its principal, John Hanna, has terminated his employment with KCLW(AM), Hamilton, Texas.

12. IT IS FURTHER ORDERED, That in event of a grant of Smith's application, the construction permit shall be conditioned as follows:

Prior to the commencement of program test authorization, the permittee shall certify to the Commission that its principal, W. Leon Smith, has resigned as officer and director and divested his interest in Progressive Media Communications, Inc.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **August 29, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-144

In the Matter of

Review of Technical Parameters
for FM Allocation Rules of Part 73,
Subpart B, FM Broadcast Stations

ORDER GRANTING REQUEST FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

Adopted: July 27, 1988 **Released: August 8, 1988**

By the Chief, Mass Media Bureau:

1. On March 22, 1988, the Commission released a *Further Notice of Proposed Rule Making* (*Further Notice*) in the captioned matter.[1] In the *Further Notice*, the Commission proposed revising the minimum distance separation requirements for FM broadcast stations on IF-related channels. Originally, comments on the proposal were to be filed on or before May 13, 1988 and replies on or before May 31, 1988. However, on May 9, 1988, the Chief, Mass Media Bureau, acting under delegated authority, issued an *Order Granting Motion for Extension of Time for Filing Comments* (*Order*) that extended the comment period by 60 days.[2] Thus comments were to be filed by July 12, 1988 and replies by July 27, 1988.

2. On July 20, 1988, Peter and John Radio Fellowship, Inc. and Key Broadcasting Corporation (Petitioners) jointly filed a request that the period to submit reply comments in this proceeding be extended four weeks, to and including August 24, 1988. The Petitioners are licensees, respectively, of two Class B short-spaced IF-related FM broadcast stations located in the Baltimore, Maryland area, and consequently they may be directly affected by Commission action on the proposal contained in the *Further Notice*.

3. In support of the requested extension, the Petitioners claim that additional time is needed to adequately reply to the comments filed on July 27, 1988 (the last day of the comment period). In particular, the Petitioners refer to comments filed by one party which contain field test data, and state that it is important to have the "well considered views" of their engineers as to the claims and specific data submitted by this commenter. The petitioners also note that the comment dates set by the *Order* provide three days less for preparation of replies than the original dates.

4. The Commission does not routinely grant extensions of time for filing comments in rule making proceedings.[3] In this case, we believe that some additional time is justified, but not as much as requested by the Petitioners. We recognize that the issues involved in this proceeding are highly technical and that analysis of data can be time consuming. However, we believe that two weeks additional time should be sufficient to permit parties wishing to submit reply comments adequate opportunity to study the initial comments that have been filed in this proceeding. Good cause having been shown, we will extend the time for filing reply comments by two weeks.

5. Accordingly, IT IS ORDERED That the Request for Extension of Time submitted by Peter and John Radio Fellowship, Inc. and Key Broadcasting Corporation IS GRANTED to the extent that the date for filing reply comments in this proceeding IS EXTENDED to August 10, 1988.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and Sections 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

FOOTNOTES

[1] *See* FCC 88-87, 3 FCC Rcd 1661 (1988).

[2] *See* DA 88-704, 3 FCC Rcd 2818 (1988).

[3] *See* §1.46 of the Commission's rules (47 CFR 1.46).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

A Spectrum Allocation for
Cordless Telephones in the
800/900 MHz Band

ERRATA

Released: August 8, 1988

On December 10, 1987, the Commission released an *Order* (FCC 87-358) in the above captioned proceeding. The *Order*, at paragraph 2, stated that the interim provisions for cordless telephones require importation to cease by February 15, 1988, and require marketing to cease by February 15, 1989. The dates cited are in error and are hereby corrected to February 15, 1989, and February 15, 1990, respectively. Also, in paragraph 9 of the *Order*, the term RM-5320 was inserted inadvertently and is hereby deleted. These actions are ordered under delegated authority of §0.241 of the rules.

OFFICE OF ENGINEERING AND TECHNOLOGY

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

An Indefinite Extension of the Part 15 Interim Provisions for Cordless Telephones — RM-5320

ERRATA

Released: August 8, 1988

On December 10, 1987, the Commission released an *Order* (FCC 87-355) in the above captioned proceeding. The *Order*, at paragraph 3, stated that the interim provisions for cordless telephones require importation to cease by February 15, 1988, and require marketing to cease by February 15, 1989. The dates cited are in error and are hereby corrected to February 15, 1989, and February 15, 1990, respectively. Also, the released text of the *Order* omitted a minus sign from the +0.01% in paragraph 5 of the Rule Changes. The text printed in the Federal Register included the minus sign. The Federal Register is correct and the released text is hereby corrected to read +0.01%. These actions are taken under delegated authority of §0.241 of the rules.

OFFICE OF ENGINEERING AND TECHNOLOGY

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 85-171

In the Matter of

Technical Flexibility in Mobile
Communications Services, Rules
Parts 2, 22, 74 and 90

ORDER EXTENDING TIME TO FILE REPLY COMMENTS

Adopted: July 27, 1988; Released: August 8, 1988

By the Chief Engineer:

1. A Further Notice of Proposed Rule Making in the above entitled proceeding, FCC 88-65, was adopted by the Commission on February 25, 1988, and released on March 22, 1988. Comments in this proceeding were due June 20, 1988. Reply comments were due July 20, 1988.

2. The Commission has received a request from the Land Mobile Radio Section (hereinafter "the Section) of the Telecommunications Industry Association to extend the date for filing reply comments to the *Further Notice of Proposed Rule Making* (*Further Notice)* in these proceedings. The Section requested that the reply date be extended to allow for an additional six months of study.

3. The Section cites the need "for the industry to arrive at a consensus recommendation regarding the appropriate ATA transmitter emission parameters and measurement procedures." The Section believes that a six month period is needed to complete their review of the proposal in the *Further Notice*. The Section states that the additional time "may yield valuable insight into the appropriate specifications and measurement procedures necessary to meet the goals of this proceeding."

4. Based on the need for a thorough review of the new proposals developed in the *Further Notice*, an extension of time to obtain more reply comments seems reasonable. However, an extension of six months seems excessive when viewed in the context of the four month period already provided to file comments and reply comments. Therefore, an extension of five weeks seems appropriate.

5. In view of the foregoing, *IT IS ORDERED*, pursuant to the delegated authority contained in 47 CFR 0.241(d), that the period of time for the filing of reply comments in the above entitled proceeding is extended until August 31, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of

MT. BAKER BROADCASTING CO., INC.

For Reinstatement of Construction Permit of Station KORC(TV), Anacortes, Washington

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 1988; Released: August 5, 1988

By the Commission:

1. The Commission has before it for consideration: (a) the June 23, 1987, action of the Chief, Video Services Division, cancelling the construction permit of Mt. Baker Broadcasting Co., Inc. (Mt. Baker) for Station KORC(TV), Channel 24, Anacortes, Washington, and deleting the call sign; (b) the staff's January 25, 1988, action denying reconsideration of that action; and (c) Mt. Baker's February 25, 1988, application for review of those actions.

2. On July 1, 1983, the Commission issued Mt. Baker a construction permit to build a new television station on the channel, and it was initially afforded until January 1, 1985, in which to complete construction. With the grant of three applications for extensions of time, Mt. Baker's construction period was extended until July 1, 1986. Those applications were granted in light of the standards in effect at that time for reviewing extension applications, and on the basis of the permittee's representations that construction was proceeding, including statements that equipment had been ordered, that the tower and transmitter building would be completed by August 1985, and that the station would begin operation in October 1985. Despite its previous representations, the station was still not operational by July 1, 1986, and Mt. Baker filed its fourth extension request. The staff found, however, that, after 3 1/2 years, Mt. Baker had still not shown that any equipment had been delivered, that the tower and transmitter building had been erected, or that the studio facilities had been completed. Consequently, the staff was unable to conclude that the station could be completed by an estimated "on air" date of December 31, 1986. Therefore, on December 5, 1986, Mt. Baker's extension application was denied, and its construction permit was cancelled.

3. On December 31, 1986, the permittee sought reconsideration of the staff's December 5 action, arguing that the station was "commencing program tests with its facility" as of that date. Mt. Baker therefore requested reinstatement of its permit to enable it to apply for its "license to cover completed facilities. In a supplement, Mt. Baker added that its tower and transmitting equipment had been installed during December 1986 and that equipment tests had begun on December 24. On the basis of Mt. Baker's representations, the staff reinstated the construction permit on January 12, 1987, on the condition that a license application be filed within ten days, in accordance with the Commission's Rules.[1] At the same time, the staff set a new expiration date for the reinstated construction permit of January 30, 1987.

4. By April 28, 1987, however, a license application had still not been filed. On that date, the Commission's Field Operations Bureau conducted an inspection of the station, which revealed that the station had been constructed and was being operated with substantially different facilities than those authorized. Specifically, the construction permit authorized an Andrew 33H 7 10/A21138 antenna installed on a tower 403 feet above ground level (AGL) with operation at 3630 kW visual effective radiated power (ERP). In contrast, the inspection showed that Mt. Baker had built a tower 100 feet AGL on which it installed a Scala SL-8 paraslot antenna. Further, the station was found to be operating at 10.3 kW ERP, using a transmitter specified to produce peak output power of only 1000 watts (1 kW). The facilities built are equivalent to those used by many television translator or low power television stations. Because Mt. Baker's construction permit had expired with no license application having been filed, the staff concluded that Mt. Baker was operating without authority and, on June 23, 1987, cancelled the construction permit and ordered Mt. Baker to cease operations by June 29. Mt. Baker's petition for reconsideration of that action followed on October 27, 1987.

5. In support of its petition for reconsideration, Mt. Baker admitted that the station had been built with facilities other than those authorized, but argued that the staff should consider its service record and good faith efforts to build. Specifically, the permittee stated that it had attempted to correct the operating violations identified during the Field Operations Bureau inspection. Mt. Baker also asserted that, on May 6, 1987, it had filed an application to modify its construction permit to reflect facilities already constructed, although there is no record that any such application has been filed. The staff found that, in Mt. Baker's December 31, 1986, request for reinstatement of its construction permit, the permittee represented that construction had been completed and that program tests had been commenced. There was no indication, however, that construction and operation were other than that authorized. Consequently, the staff found that Mt. Baker's construction permit was reinstated on the incorrect assumptions that the station had been built with authorized facilities and that the filing of a license application for those facilities was imminent. When the inspection of the station revealed that this was not the case, and when Mt. Baker failed to file a license application as it had been ordered to do (and also failed to seek a further extension), the staff cancelled the permit and ordered the station off the air. The staff also determined that good faith had not been shown, or the station would have been built as authorized. Consequently, on January 25, 1988, Mt. Baker's petition for reconsideration was denied, and its application for review followed on February 25, 1988.

6. In support of its application for review, Mt. Baker argues that a forfeiture is the appropriate sanction for unauthorized construction, not cancellation of the construction permit. It also reiterates its contention that it has made a substantial commitment of resources to the project and that it has provided a first local television service to Anacortes. Finally, it asserts that no other applicant will be allowed to apply for the channel (because of the community's proximity to Seattle) until the "freeze" on certain applications for new television stations is lifted.[2]

7. Section 73.3598(a) of the Commission's Rules provides a permittee with 24 months to complete construction of a new television station and to file a license application. In addition, a permittee may seek extensions of time of up to six months, upon a showing of one of the following three circumstances: (1) completion of construction with testing underway; (2) substantial progress in construction; or (3) reasons clearly beyond the permittee's control that prevented construction, if all possible steps have, nevertheless, been taken to resolve the problem and proceed with construction. Section 73.1620(a) provides that, "upon completion of construction *in accordance with the terms of the construction permit* " [emphasis added], the permittee can conduct program tests, provided that a license application is filed within ten days. Mt. Baker has not established that it was prevented from constructing its authorized facilities because of reasons beyond its control. When the staff reinstated Mt. Baker's construction permit on January 12, 1987, it did so based only on the reasonable belief that the station had been constructed as authorized and that the filing of the license application was imminent. Although Mt. Baker argues that it has spent more than 600,000 in construction and operation of the station, such expenditures have not been documented. Moreover, Mt. Baker has not shown that the money was spent on constructing authorized facilities, and the amount used for operating expenses has no bearing on the progress made in construction. In any event, the alleged expenditure of funds for constructing facilities that differ so substantially from the authorized facilities provides no persuasive basis for acting favorably on Mt. Baker's application for review.

8. Mt. Baker contends that the imposition of a forfeiture is often the penalty for unauthorized construction of a broadcast station. forfeiture might be appropriate in some cases where construction differs by a modest degree from the facilities authorized. The departure in this case is clearly not modest; for example, operation with 10.3 kW ERP, compared to 3630 kW authorized. In addition, there are no significant mitigating circumstances in this case, but there are substantial aggravating factors. In that regard, improper construction did not occur through error or inadvertence; the facts clearly indicate an effort to deceive the Commission. A license application would have revealed what had been built and would, almost certainly, have been denied, but Mt. Baker did not file one, and the deception was not uncovered until the Field Operations Bureau inspection. Even then, Mt. Baker took no steps toward remedying the situation. It could have sought authority to modify its facilities before undertaking construction, but no such application was filed.[3] It could have filed an application for additional time to build after January 30, 1987; it did not. Finally, it was ordered to file a license application within ten days of beginning operation; again, it did not. For all these reasons, we conclude that a forfeiture is inappropriate in this case. Moreover, such action comports with Section 319(b) of the Communications Act of 1934, as amended, which provides that a construction permit will be "forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow."

9. Finally, we reject Mt. Baker's argument that the "freeze" will preclude others from providing service to Anacortes on the channel. The "freeze" is temporary and, in any event, it can be waived in an appropriate case. *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Mimeo No. 4074, RM-5811 (released July 17, 1987). Consequently, we find no basis to disturb the staff's actions in this matter.

10. Accordingly, IT IS ORDERED, That Mt. Baker's application for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Section 73.1620(a)(1) of the Commission's Rules provides that a television station may begin program tests upon notification of the Commission, provided that a license application is filed within ten days.

[2] On July 16, 1987, we adopted an Order in the Rule Making proceeding entitled *Advanced Television Systems and Their Impact on* the Existing Television Broadcast Service, Mimeo No. 4074, RM-5811 (released July 17, 1987). In that Order, we imposed a "freeze" on the acceptance for filing of applications for new television stations in cities within the minimum co-channel separation distance of 30 specific cities, one of which is Seattle, Washington, which is approximately 59 miles from Anacortes.

[3] Mt. Baker also states that, on May 6, 1987, it filed a modification application specifying the facilities it had already constructed. Although it maintains that the application was filed with the appropriate fee, there is no record in our Fee Section or anywhere else in the Commission of any such application being filed.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

THE PUBLIC TELEPHONE COUNCIL PETITION FOR DECLARATORY RULING

Released: August 9, 1988

The Public Telephone Council filed on July 18, 1988, pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, an "expedited petition for declaratory ruling" that Bell Operating Company pay telephones are customer premises equipment under the Commission's regulatory policies. Comments may be filed within thirty days of the date of this public notice; reply comments may be filed within fifteen days thereafter. Copies of the petition, and comments when filed, may be inspected and copied at the Commission's Public Reference Room, Rm. 6220, 2025 M Street, NW, Washington, DC, during the hours of 8:30 a.m. - 12:30 p.m. and 1:30 p.m. - 3:00 p.m. Mondays through Thursdays. Such copies also may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857-3800.

For further information, telephone Jim Ferris at (202) 634-1830.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NETWORK TELECOMMUNICATIONS, INC. File No. I-T-C-88-113

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 28, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application, filed on April 5, 1988 and supplemented by letter of June 2, 1988 by Network Telecommunications, Inc. (Nettel) requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 27, 1988. No comments were received.

2. Nettel, a Colorado company, is already providing domestic resale service. It now proposes to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by Nettel.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-113 IS GRANTED and Nettel is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI Telecommunications Corp.'s Tariff FCC No. 1, AT&T's Tariffs FCC Nos. 1 and 2, and US Sprint's Tariffs FCC Nos. 1 and 2, between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between Nettel and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that Nettel shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NATIONAL TELEPHONE SERVICES, INC.

File No. I-T-C-88-138

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 28, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. The above-captioned application, filed on May 18, 1988 and supplemented by letters of May 31, and June 28, 1988, by National Telephone Services, Inc. (NTS), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on June 1, 1988. No comments were received.

2. NTS, a Maryland corporation, is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by NTS.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-138 IS GRANTED and NTS is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI Telecommunications Corp.'s Tariff FCC No. 1, between the U.S. and those points listed in that tariff.

5. Copies of any operating agreements entered into between NTS and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that NTS shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-88-139

Application for authority to acquire and operate facilities for service to the Bahamas, Barbados, the Netherlands Antilles and Trinidad and Tobago

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 28, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application, filed on May 13, 1988, by MCI Telecommunications Corporation (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for the provision of direct service between the U.S., on the one hand, and the Bahamas, Barbados, the Netherlands Antilles and Trinidad and Tobago, on the other hand, and beyond. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to the Bahamas, Barbados, the Netherlands Antilles and Trinidad and Tobago by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-139 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 81 satellite voice-grade half-circuits between an appropriate earth station on the east coast of North America and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and the Bahamas, Barbados, the Netherlands Antilles and Trinidad and Tobago, furnished by MCI's overseas correspondents;

b. lease from AT&T and operate 81 voice-grade circuits in the east coast earth station;

c. lease and operate 81 voice-grade circuits between the east coast earth station and MCI's West Orange, New Jersey operating office; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice service, between the U.S. and the following points and beyond:

1 - the Bahamas - 30 circuits;
2 - Barbados - 24 circuits;
3 - the Netherlands Antilles - 15 circuits;
4 - Trinidad and Tobago - 12 circuits

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between MCI and its correspondents in the Bahamas, Barbados, the Netherlands Antilles and Trinidad and Tobago, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commsision requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS COMPANY — File No. I-T-C-88-140

Application for authority to acquire and operate facilities for service to Norway and Finland

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 28, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application, filed on May 18, 1988, and supplemented on June 29, 1988 by US Sprint Communications Company (US Sprint), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct service between the U.S., on the one hand, and Norway and Finland, on the other hand, and beyond. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Norway and Finland by US Sprint.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-140 IS GRANTED, and US Sprint is authorized to:

a. lease from Comsat and operate 23 satellite voice-grade half-circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and Norway and Finland furnished by US Sprint's correspondents;

b. lease and operate 23 voice-grade circuits in the Etam, West Virginia earth station;

c. lease and operate 23 voice-grade circuits between the Etam, West Virginia earth station and US Sprint's New York City operating office; and

d. use said facilities to provide US Sprint's regularly authorized services, including switched voice service, between the U.S. and the following points and beyond:

1 - Norway - 15 circuits;
2 - Finland - 8 circuits.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between US Sprint and its correspondents in Norway and Finland, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commsision requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

File No. I-T-C-88-144

Application for authority to acquire and operate additional facilities for service between the U.S. and the United Kingdom

ORDER AND AUTHORIZATION

Adopted: July 28, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. The captioned uncontested application filed on May 26, 1988 and supplemented by letter of June 21, 1988 by American Telephone and Telephone Co. (AT&T), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to install a Telephone Line Doubler (TLD) Terminal equipment on the previously authorized TAT-6 cable facility for service between the U.S. and the U.K. The application was placed on public notice on June 15, 1988. No comments were received. Upon consideration of the application, we find that authorization of the requested facilities and services is required by the present and future public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-144 IS GRANTED and AT&T is authorized to acquire and install one TLD terminal on up to 24 voice-grade bearer circuits in the TAT-6 cable authorized for service to the United Kingdom to derive up to 24 additional TAT-6 circuits to provide voice-only private-line service, between the U.S. and the United Kingdom.

3. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-88-080

Application for Authority to Acquire and Operate the Interests of Comsat Earth Stations, Inc., RCA Global Communications, Inc., and MCI International, Inc. in the Lenox International Earth Station

COMSAT EARTH STATIONS, INC., WESTERN UNION INTERNATIONAL, INC, RCA GLOBAL COMMUNICATIONS, INC., and AT&T COMMUNICATIONS, INC — File No. C-S-G-88-027-AL

Application for Authority to Transfer the License for the Lenox, West Virginia Earth Station (WA-34) to AT&T Communications, Inc.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: July 29, 1988 **Released: August 9, 1988**

By the Chief, International Facilities Division:

1. On February 12, 1988, the joint owners of the Mainland Consortium of the Earth Station Ownership Committee (ESOC) filed an application to transfer the licenses for the ESOC Lenox, West Virginia international earth station to the American Telephone and Telegraph Company (AT&T). On February 16, 1988, AT&T filed its Section 214 application for authority to acquire and operate the Lenox facilities. The applications are unopposed. For the reasons stated below, we grant the instant applications. In so doing, we also authorize the dissolution of the Mainland Consortium of the ESOC.

2. The applications currently before us are the last in a series of filings presented to us by the joint owners of the various ESOC consortia to effectuate the dissolution of the ESOC consistent with the Commission's *Earth Station Modification Order*.[1] In that decision the Commission adopted a more flexible earth station ownership policy permitting carriers other than Comsat and the ESOC composed of Comsat and participating U.S. international service carriers to own and operate international multi-purpose earth stations. The Commission concluded that a more liberal earth station ownership policy would benefit users by increasing carrier and service benefits and creating competitive pressures on rates. In the transition to a new competitive earth station policy, it permitted the ESOC owners to negotiate among themselves the future of the ESOC and then submit an agreement for Commission consideration. The Commission stated its expectation that any arrangements proposed by the ESOC owners would be consistent with antitrust laws and would assure the continuance of efficient, high quality service, without disruption, at reasonable rates and with equitable access. With our grant of the instant applications, we will have approved the series of filings submitted to the Commission by the ESOC owners to implement the dissolution of the various consortia of the ESOC.[2]

3. The AT&T application advises that AT&T, with its current 47.5 percent ownership interest, will purchase the remaining 52.5 percent interest in the Lenox earth station and its associated diversity interconnect link facilities for125,000. AT&T states that this arrangement satisfies the concerns set forth in the Commission's *Earth Station Modification Order*. AT&T advises that the arrangements were agreed to by all parties and are consistent with the more flexible international earth station ownership policy contemplated by the order. It further notes that the transfer will not result in a disruption of service and, in fact, will continue to provide restoration capabilities for the Etam earth station circuits, thereby facilitating continued availability of high quality service under adverse atmospheric conditions.

4. We find that AT&T's acquisition and operation of the Lenox earth station are in the public interest. [3] AT&T is well qualified to assume ownership and operation of the facilities. The joint owners of the Mainland Consortium of the ESOC have negotiated arrangements that prevent service disruptions to customers while providing for dissolution of the consortium arrangements no longer required under the Commission's more flexible earth station ownership policies. Moreover, AT&T's ownership of this diversity facility raises no antitrust concerns because the effect of the acquisition will not be to lessen competition substantially. Finally, AT&T, as a common carrier, is required to provide service on terms that are just, reasonable and not unreasonably discriminatory, and, as a dominant carrier, must provide cost support for its tariff filings.

5. In conclusion, we find that the proposed arrangements meet the relevant statutory requirements and are consistent with the policies set forth in the Commission's *Earth Station Modification Order*.

6. Accordingly, IT IS CERTIFIED that the public interest, convenience and necessity require that the American Telephone and Telegraph Company acquire the interests of Comsat Earth Stations, Inc, Western Union International, Inc. and RCA Global Communications, Inc. in the Lenox, West Virginia earth station.

7. IT IS FURTHER ORDERED that that application of AT&T, File No. I-T-C-88-080, IS GRANTED, and AT&T is authorized to acquire and operate the interests of the ESOC joint owners in the Lenox facilities and to offer earth station services to authorized users.

8. IT IS FURTHER ORDERED that the application of the ESOC joint owners, File No. C-S-G-88-027-AL, IS GRANTED, and the applicants are authorized to assign their radio station license for the Lenox facilities to AT&T.

9. The Commission retains jurisdiction over this matter to ensure that all present and future authorized carriers have nondiscriminatory use of, and equitable access to, the communications satellite system and earth stations.

10. This order is issued under Section 0.291 of the Commission's Rules and Regulations, 47 C.F.R. Section 0.291 (1987), and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] 100 F.C.C. 2d 250 (1984).

[2] *See* American Telephone and Telegraph Co., 2 FCC Rcd 6635 (1987) (approving AT&T's acquisition of Etam, Roaring Creek and Jamesburg facilities); MCI Communications Corp., 3 FCC Rcd 6 (1987) (granting MCI's acquisition of Andover earth station); Comsat International Communications, Inc., 2 FCC Rcd 1167 (1987) (allowing discontinuance of Brewster Flat facility); Comsat Earth Stations, Inc., 3 FCC Rcd 1803 (1988) (allowing discontinuance of Paumalu facility and dissolution of Hawaii Consortium of the ESOC); RCA Global Communications,Inc., 3 FCC Rcd 2814 (1988) (authorizing RCA's acquisition of Pulantat earth station and dissolution of Guam Consortium of the ESOC).

[3] The Common Carrier Bureau recently has consented to the assignment of the radio licenses for the associated microwave facilities that interconnnect the Etam and Lenox earth stations. *See , e.* g., File No. 2065-CF-AL(1)-88 (granted April 14, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-481

In the Matter of

Amendment of Section 73.202(b), RM-6000
Table of Allotments,
FM Broadcast Stations.
(Elkton, Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 6781 (1987), issued at the request of Stonewall Broadcasting Company (petitioner), proposing the substitution of Channel 253B1 for Channel 252A and modification of its construction permit[1] to specify operation on the higher class facility. Petitioner filed supporting comments reiterating its intention to expeditiously effectuate the station upgrade.

2. We believe the public interest would benefit by substituting Channel 253B1 for Channel 252A at Elkton, Virginia, since it would provide that community with its first wide coverage area FM service. The substitution can be made in conformity with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) west of Elkton.[2] The restriction is necessary to avoid a short spacing to Station WMZQ-FM, Channel 254B, Washington, D. C.

3. Since Elkton is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner states it will comply with the notification requirements of Section 73.1030(a) of the Commission's Rules.

4. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit (BPH-840607IA) for Channel 252A to specify operation on Channel 253B1.

5. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Elkton, Virginia	253B1

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit, BPH-840607IA, for Channel 252A, Elkton, Virginia, IS MODIFIED, to specify operation on Channel 253B1 in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. .

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] *See* BPH-840607IA.

[2] The restricted site coordinates are 38-22-42 and 78-44-07.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-479

In the Matter of

Amendment of Section 73.202(b), RM-5998
Table of Allotments,
FM Broadcast Stations.
(Minocqua, Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 6773 (1987), at the request of Lakeland Broadcasting, Inc. (petitioner), licensee of Station WWMH(FM) at Minocqua, Wisconsin, proposing the substitution of Channel 240C1 for Channel 240A at Minocqua. Additionally, the *Notice* proposed the modification of the license of Station WWMH(FM) to specify operation on the higher class co-channel, in order to provide the city with a first wide coverage area FM service. Petitioner submitted comments and reply comments in support of its proposal and reaffirmed its intention to effectuate the improved facilities.

2. Channel 240C1 can be substituted for Channel 240A in comformity with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1] We have obtained concurrence from the Canadian government since Minocqua is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. In view of the foregoing, we believe the public interest would be served by the substitution of Channel 240C1 for Channel 240A at Minocqua, Wisconsin, providing that community with a first wide coverage area FM service. Therefore, in accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WWMH(FM) to specify operation on Channel 240C1 in lieu of Channel 240A.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Minocqua, Wisconsin	240C1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WWMH(FM), Minocqua, Wisconsin, IS MODIFIED, to specify operation on Channel 240C1 in lieu of Channel 240A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The reference coordinates are 45-52-14 and 89-42-35. Petitioner's current transmitter site, at coordinates 45-49-13 and 89-43-27, is short-spaced to Station WIFC(FM), Channel 238C at Wausau, Wisconsin. Therefore, petitioner must relocate its current transmitter site.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-480

In the Matter of

Amendment of Section 73.202(b), RM-6003
Table of Allotments,
FM Broadcast Stations.
(Peshtigo, Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 6779 (1987), issued at the request of Good Neighbor Broadcasting, Inc. (petitioner), proposing the allotment of Channel 241A to Peshtigo, Wisconsin, as that community's first local FM service. Petitioner filed supporting comments restating its intention to apply for the allotment.

2. Channel 241A can be allotted to Peshtigo in compliance with the Commission's minimum distance separation requirements.[1] Since the community is located within 320 kilometers (200 miles) of the U.S.- Canadian border, concurrence has been obtained from the Canadian government.

3. We believe the public interest would be served by allotting Channel 241A to Peshtigo, Wisconsin, as a first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 22, 1988** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Peshtigo, Wisconsin	241A

4. The window period for filing applications will open on **September 23, 1988,** and close on **October 24, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The reference coordinates are 45-03-18 and 87-45-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-444

In the Matter of

Amendment of Section 73.202(b), RM-5973
Table of Allotments,
FM Broadcast Stations.
(Parkersburg, West Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 6373 (1987), issued at the request of Signal One Communications, Inc. (petitioner),[1] licensee of Station WMGP(FM), Channel 257A, Parkersburg, West Virginia, proposing the substitution of Channel 256B1 for Channel 257A and modification of its license accordingly. Supporting comments were submitted by petitioner reaffirming its commitment to effectuate the improved facilities.

2. The substitution can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.9 miles) southwest of Parkersburg.[2] The restricted site avoids a short spacing to Station WMRT(FM), Channel 202B1, Marietta, Ohio. In addition, since this proposal is located within 320 kilometers (200 miles) of the U.S.- Canadian border, concurrence of the Canadian government has been obtained.

3. We believe the public interest would be served by substituting Channel 256B1 for Channel 257A at Parkersburg, West Virginia, since the community could receive its second wide coverage area FM service. We are herein modifying the license of Station WMGP(FM) to specify operation on Channel 256B1 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Parkersburg, West Virginia	236B, 256B1, 276A

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WMGP(FM), Parkersburg, West Virginia, IS MODIFIED, to specify operation on Channel 256B1 in lieu of Channel 257A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Formerly Parkersburg/Marietta Broadcasting, Inc.

[2] The restricted site coordinates are 39-14-00 and 81-37-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-380

In the Matter of

Amendment of Section 73.606(b), RM-6264
Table of Allotments,
TV Broadcast Stations.
(Jonesboro, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed on behalf of Outlaw Broadcasting (petitioner) requesting the allotment of UHF television Channel 46 to Jonesboro, Arkansas, as that community's second local commercial television broadcast service. Petitioner states that it will apply for the channel if allotted in response to its request.

2. Jonesboro (population 31,530),[1] seat of Craighead County (population 63,239), is located in northeastern Arkansas, approximately 180 kilometers (110 miles) northeast of Little Rock.

3. A staff engineering analysis reveals that UHF television Channel 46 at Jonesboro is short-spaced to a rule making proposal to allot Channel 46 to Gosnell, Arkansas (RM-6160), since the communities are 42 miles apart, whereas a separation of 175 miles is required. However, a staff engineering analysis has determined that UHF television Channel 48 can be allotted to Jonesboro consistent with the minimum distance requirements of Sections 73.610 and 73.698 of the Commission's Rules.[2] Therefore, we shall propose to allot Channel 48 to Jonesboro in lieu of Channel 46. As a result of our determination, petitioner should advise in its comments whether it will apply for Channel 48. Failure to comply with the foregoing requirement may ultimately lead to a denial of the proposal.

4. In view of the above, the Commission considers it appropriate to seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Jonesboro, Arkansas	8-,*19+	8-,*19+,48+

5. It should be noted that the Commission has recently imposed a freeze on new television allotments in certain metropolitan areas. [3] However, Jonesboro is not one of the communities affected thereby.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **September 29, 1988,** and reply comments on or before **October 14, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Outlaw Broadcasting
c/o Jeffrey Pylant
6 Keyser Woods Court
Baltimore, MD 21208

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Population figures were taken from the 1980 U.S. Census.

[2] Reference coordinates utilized in this determination are 35-50-12 and 90-42-24.

[3] *See* Notice of Inquiry, 2 FCC Rcd 5125 (1987), and Order, 52 FR 28346, July 29, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-379

In the Matter of

Amendment of Section 73.202(b), RM-6354
Table of Allotments,
FM Broadcast Stations.
(Havana and Madison, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1988; Released: August 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Ed Winton (petitioner), licensee of Stations WMLO, Channel 285A, Havana, Florida, and WIMV, Channel 285A, Madison, Florida. Petitioner requests the substitution of Channel 285C2 for Channel 285A at Havana, and the modification of its license to specify the higher powered channel. In order to accomplish the upgrading of Station WMLO, petitioner also seeks the substitution of Channel 274A for Channel 285A at Madison, Florida, and the modification of his license for Station WIMV accordingly. Petitioner states that he will submit applications for both channels, if allotted.

2. Channel 285C2 can be allotted to Havana in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 kilometers (9.5 miles) east to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama, and to unused Channel 287A at Chattahoochee, Florida. Channel 274A can be allotted to Madison, Florida, in compliance with the Commission's minimum distance separation requirements without a site restriction.[1]

3. As requested, we shall also propose to modify petitioner's licenses for Stations WMLO and WIMV at Havana and Madison, Florida, respectively. In accordance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 285C2 at Havana will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties. The procedures outlined in Section 1.420(g) and *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) do not apply to the change of channel at Madison since no upgrade in facilities is contemplated.

4. We believe the public interest would be served by proposing the substitution of Channel 285C2 for Channel 285A at Havana, Florida, and the concurrent substitution of Channel 274A for Channel 285A at Madison, Florida, since it could provide Havana and its environs with expanded radio service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No. Present	Proposed
Havana, Florida	285A	285C2
Madison, Florida	285A	274A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 29, 1988,** and reply comments on or before **October 14, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Eugene T. Smith, Esq.
715 G Street, S.E.
Washington, D.C. 20003
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 285C2 at Havana are North Latitude 30-34-43 and West Longitude 84-15-49. The coordinates for Channel 274A at Madison are North Latitude 30-28-06 and West Longitude 83-24-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

REPORT NO. DS-765

PUBLIC NOTICE

Released: August 5, 1988

APPLICATIONS ACCEPTED FOR REPLACEMENTS FOR DOMESTIC FIXED-SATELLITE SPACE STATIONS

In June 1987, we established by Public Notice a processing group for new domestic fixed-satellite space station applications. In response to that Public Notice, several applications were filed for satellites proposed to replace existing facilities. Because there appears to have been some confusion regarding whether applications for replacement satellites should have been filed with this group, we now waive any applicable cut off rules and accept applications for replacement facilities to be launched before the end of 1993. This Public Notice should not be construed as the announcement of a processing group for new domestic fixed-satellite space stations. Only applications proposing replacement facilities for existing space stations in the domestic fixed-satellite service may be filed.

The following applications for authority to construct, launch and operate domestic fixed-satellite space stations as replacements for existing facilities have been filed with the Commission. Any entities wishing to file applications for replacement satellites to be considered in conjunction with those listed below may do so on or before October 1, 1988.

HUGHES COMMUNICATIONS GALAXY, INC.

2291-DSS-P/LA-88

2292-DSS-P/LA-88

2293-DSS-P/LA-88

Applications for authority to construct, launch and operate three C-band domestic fixed-satellites to replace Galaxy I, Galaxy II and Galaxy III. The proposed satellites would each carry 24 transponders, each with a bandwidth of 36 MHz and an output power of 16 watts. The satellite will provide service to the 48 contiguous states, Alaska Hawaii, Puerto Rico/Virgin Islands at a maximum EIRP of 38.0 dBW. The applicant requests the same locations currently occupied by its present satellites, namely 134' W.L., 74' W.L. and 93.5' W.L.

WESTERN UNION CORPORATION

2284-DSS-P/LA-88

2285-DSS-P/LA-88

Applications for authority to construct, launch and operate two C-band domestic fixed-satellites to replace Westar IV and Westar V. The proposed satellites would each carry 24 transponders, each with bandwidth of 36 MHz and an output power of 10 watts. The satellites will provide service to the 48 contiguous states, Alaska, Hawaii, Puerto Rico/Virgin Islands at a maximum EIRP of 37.0 dBW. Transborder Services may be provided consistent with Commission policy. The applicant requests the same locations currently occupied by its present satellites, namely 99' W.L. and 122.5' W.L. Applicant's financial qualifications demonstration assumes the grant of its application to assign its satellite authorizations to Hughes Communications Galaxy, Inc. and applicant states that these applications are filed as "accommodation" applications for Hughes.

Copies of these applications, as well as any pleadings filed pursuant to this notice, will be available for inspection in the Domestic Facilities Division Public Reference Room, 2025 M Street, N.W. Washington, D.C., Room 6220.

For further information, contact Rosalee Gorman at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-361

In Re Applications of

DAVID L. ROBINSON (hereafter Robinson) — File No. BPH-870430NJ

CARROLL, CARROLL & ROWLAND (herafter Carroll) — File No. BPH-870430NK

GLORY FM LIMITED PARTNERSHIP (hereafter Glory) — File No. BPH-870430NL

For a Construction Permit
For a New FM Station on
Channel 281A, in
Calhoun, Tennessee

HEARING DESIGNATION ORDER

Adopted: July 12, 1988 **Released: August 10, 1988**

By The Chief, Audio Services Division

1. The Commission has before it for consideration the above-captioned mutually exclusive applications for a new commercial FM station.

2. *Robinson*. The applicant has indicated that he is the Vice President and General Manager of radio station WCPH(AM) and WVKS(FM), Etowah,Tennessee. Mr. Robinson has stated his intention to resign his full time position as General Manager of the above stations in the event that Calhoun is awarded a construction permit as a result of this proceeding. Accordingly, an appropriate condition will be ordered.

3. *Carroll*. In response to Section VI, FCC Form 301, Carroll has indicated that it will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(a), it is required to submit an Equal Employment Opportunity (EEO) Program which complies with the provisions of that Section of the Commission's Rules as set forth in Form 396A, the five-part Model EEO program. Paragraph IV of the Guidelines to the Model EEO Program instructs the applicant to specify the recruitment sources that it proposes to use in recruiting minority and women employees. However, Carroll's EEO program has failed to identify adequate examples of minority organizations, women's organizations, and publications in which it will place employment advertisements. Similarly, Paragraph V of the Guidelines instructs the applicant to specify the nature of the training and other forms of assistance it will provide to students, trainees, and employees. Carroll's program fails to state with particularity the nature of such training. Accordingly, Carroll shall amend its application by submitting to the Administrative Law Judge specific sources of recruitment and examples of training.

4. Max R. Carroll, James P. Carroll, and J.T. Rowland own WCLE (AM) in Cleveland, Tennessee. The station is licensed to the partnership of Carroll, Carroll, Beck and Rowland. In addition, J.T. Rowland owns 33 1/2% of WSFB-AM in Quintman, Georgia. The applicant has indicated that Max R. Carroll and James Carroll have pledged to divest their interests in station WCLE(AM), and J.T. Rowland has pledged to divest his interest in WSFB(AM), Quintman, Georgia if Carroll is awarded a construction permit as a result of this proceeding. Accordingly, an appropriate condition will be ordered.

5. *Other Matters*. Attempts to obtain FAA clearance through the Commision's Antenna Survey Branch and Robinson have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Robinson would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. Data submitted by the applicants indicated there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: Robinson

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That if a construction permit is awarded to Robinson as a result of this proceeding, David Robinson will resign from his positions with WCPH(AM) and WVKS-FM prior to commencement of program test authority.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge: Carroll

11. IT IS FURTHER ORDERED, That if a construction permit is awarded to Carroll as a result of this proceeding, Max R. Carroll and James Carroll will divest their interest in WCLE(AM), and J.T. Rowland will divest his interest in WSFB(AM), prior to the commencement of program test authority.

12. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

13. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 31, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-360

In re Applications of

TANA S. KNETSCH (hereafter Knetsch) — File No. BPH-870817MG

NORTHERN ILLINOIS STUDENT ASSOCIATION (hereafter NIUSA) — File No. BPED-870819MA

ADLAI E. STEVENSON, IV (hereafter Stevenson) — File No. BPH-870819MD

Robert M. Mason, Laura S. Moch, d/b/a M&M BROADCASTING (hereafter M&M) — File No. BPH-870819ME

NELSON ENTERPRISES, INC. (hereafter Nelson) — File No. BPH-870819MN

PEGGY JO MARTIS (hereafter Martis) — File No. BPH-870819MW

SECOND CITY BROADCASTING, INC. (hereafter Second City) — File No. BPH-870819NA

HOMETOWN COMMUNICATIONS, INC. (hereafter Hometown) — File No. BPH-870819NF

Construction Permit for
a New FM Station on Channel 235A,
DeKalb, Illinois

HEARING DESIGNATION ORDER

Adopted: July 12, 1988; Released: August 10, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. On October 5, 1987, Second City amended its application, apparently to change its transmitter site. The amendment was returned as insufficient for tender by staff letter on February 1, 1988 because no site availability certification for the new site was submitted. Second City's application, as originally filed, was found to be acceptable. On February 22, 1988, Second City filed a timely petition for reconsideration of the staff's action returning its October 5 amendment, contending that the amendment had been improperly returned. Second City argues that the site availability certification originally submitted with its application also applied to the amendment because the amendment sought only to correct an erroneous description of the transmitter site, which was not changed by the amendment. Second City thus concludes that it was unnecessary to include a site availability certification with its amendment.

3. In order to be favorably considered, a petition for reconsideration must establish that the action taken by the Commission or designated authority from which reconsideration is sought involved findings of fact or conclusions of law which were erroneous. *See* 47 C.F.R. § 1.106(d)(2). The staff reasonably concluded that the amendment in question specified a new transmitter site because Second City's cover letter, accompanying the amendment stated: "[t]his amendment proposes a change in transmitter site." Also, the cover sheet of the engineering section of the amendment was titled "Modify Application 870819NA Move to New Site." In the application as originally filed, the transmitter site was described in Section V-B, Item 2(a), FCC Form 301 as "Southwest Corner of Twombly and Willrett Roads, Malta, IL." In the amendment the transmitter site is described in Section V-B, Item 2(a), FCC Form 301 as "0.7 km east of corner of Wilrett and Twombly Roads, Malta, DeKalb County, IL., 11.6 km West of DeKalb, IL." Furthermore, the coordinates of the transmitter site listed in Section V-B, Item 2(b), FCC Form 301 of the original application were: 41' 56' 58" North Latitude, 88' 54' 26" West Longitude. The coordinates of the transmitter site listed in Section V-B, Item 2(b), FCC Form 301 in the amendment were 41' 56' 47" North Latitude, 88' 53' 53" West Longitude. Therefore, we are not persuaded by Second City's argument that the discussion included in the engineering report to the amendment indicates that the amendment was filed to correct the site description, and not for the purpose of specifying a new site. Because the amendment in question appeared to propose a new transmitter site for which no site availability certification was submitted, the staff properly returned the amendment as not sufficient for tender.

4. Second City's petition, however, clarifies certain facts contained in the amendment, *viz*, that the site certification in the application as originally filed covered the transmitter site, *as amended*, and not the site as originally described. As Second City states in its petition: " . . . the site certification was initially intended to cover the site depicted in the amendment rather than the site erroneously depicted in the original application." Petition for Reconsideration at 3. Therefore, we will grant Second City's Petition for Reconsideration to the extent that it corrects its transmitter site. Because the Commission has retained a copy of the previously returned amendment, for administrative convenience, we will reinstate the amendment and associate the material therein referencing the actual transmitter site with Second City's application.

5. Stevenson lists the distance to its 1 mV/m contour along the 180' radial as 32 kilometers in Section V-B, Item 19, FCC Form 301. Stevenson's contour map, however, shows that distance to be 22 kilometers. The staff, drawing on the application as a whole, confidently and reliably verified that the distance to the 1 mV/m contour along the

180' radial is 22 kilometers, as plotted on Stevenson's contour map. Stevenson's application, therefore, is acceptable for filing. Stevenson will be required to file a corrective amendment with the presiding Administrative Law Judge within 30 days of the release of this Order.

6. *City Coverage.* Applicants NIUSA, Stevenson and Nelson request a waiver of 47 C.F.R. § 73.315 which requires that applicants provide a 3.16 mV/m (70 dBu) signal to the entire proposed city of license. NIUSA's proposal provides the requisite coverage to 81% of the principal community. Stevenson's proposal provides the requisite coverage to 80% of the principal community. Nelson's proposal provides the requisite coverage to 85.5% of the principal community. The Commission does not require waiver of 47 C.F.R. § 73.315 unless the proposed 70 dBu coverage falls below 80% of the area of the proposed city of license. *See* John *R. Hughes*, 50 Fed. Reg. 5679 (Feb. 11, 1985). *See also A. B. C. D. Broadcasting*, 2 FCC Rcd 6551 (1987) (Hearing Designation Order). Consequently, the waiver requests of NIUSA, Stevenson and Nelson will be dismissed as moot.

7. Applicants Knetsch, M&M, Second City and Hometown also request waiver of the city coverage provision of 47 C.F.R. § 73.315. These proposals all provide the requisite coverage to less than 80% of the principal community of license. Several justifications for the waiver requests have been proffered. Essentially, these applicants assert that the site restriction placed on this allocation makes it impossible to provide the requisite 70 dBu coverage to the entire principal community of license without violating the Commission's minimum distance separation rules, 47 C.F.R. § 73.207. Second City also asserts that the city limits of the principal community have been extended to the northeast, including areas which are lightly populated. Furthermore, Second City asserts that a portion of the eastern part of the principal community which lies outside its 70 dBu contour is an area without normal residential population; therefore, failure to place a 70 dBu signal over this area is not crucial.

8. The *Report and Order* in Docket No. 86-134, Mimeo 87647, released June 5, 1987, restricted the transmitter site for the Channel 235 A DeKalb, Illinois allocation to 11.3 kilometers west of the city to avoid short spacing to WYTZ(FM), Channel 234, Chicago, Illinois and to Station WJZQ(FM), Channel 236, Kenosha, Wisconsin. 2 FCC Rcd 3318 (1987). Because the proposals of Knetsch, M&M, Second City and Hometown fail to provide the requisite coverage under 47 C.F.R. § 73.315 while the other applicants are considered to be in full compliance with 47 C.F.R. § 73.315, an appropriate issue will be specified.

9. Nelson requests a waiver of the Commission's multiple ownership rules, 47 C.F.R. § 73.3555, because its proposal for DeKalb, Illinois, if granted, would result in an impermissible overlap with the signal contour of co-owned FM Station WSPY(FM) (presently licensed to Plano, Illinois). In support of its waiver request, Nelson asserts that "a miminum of 5 broadcast stations place a city grade signal over the are (sic) and over 15 place a primary signal over the area" and that grant of its waiver request would be in the public interest. Nelson's supporting engineering statement asserts that the overlap with WSPY(FM) will encompass approximately 1.4% of the total coverage area of its proposal for DeKalb, IL. Nelson characterizes the overlap of the 1 mV/m contours for WSPY(FM) and the instant proposal as "minimal." Nelson fails to indicate, however, the percentage of the overall area of coverage of the service contour of WSPY(FM) that the overlap will encompass. Nelson also fails to indicate the percentage of the overall population of the service contours of WSPY(FM) and its DeKalb proposal which are encompassed in the overlap. Consequently, there is no basis to conclude that the resulting overlap with WSPY(FM) would, in fact, be *de minimis* under established Commission precedent. *See , e. g., KSOO - TV*, 43 FCC 2d 879, 880 (1973). Furthermore, Nelson fails to make any meaningful showing as to the public interest benefit that would be derived from a grant of the requested waiver. Consequently, Nelson's request for a waiver of the duopoly provisions of 47 C.F.R. § 73.3555 must be denied.

10. Nevertheless, Nelson pledges that its principals Lawrence W. Nelson, and Pamela A. Nelson will divest themselves of all attributable interests in WSPY(FM) upon grant of its proposal for new FM service to DeKalb, Illinois pursuant to a decision following a comparative hearing. Further, Nelson pledges that its principal Dallas Ingemunson will divest himself of all attributable interest in the new FM service to DeKalb, Illinois upon grant of Nelson's proposal pursuant to a decision following comparative hearing. Nelson's divestiture pledge is contingent on grant of its proposal in a comparative proceeding. Nelson's conditional divestiture pledge, however, does not insure Nelson's compliance with the duopoly provisions of 47 C.F.R. § 73.3555 because Nelson does not pledge to divest in the event that it is granted the license through a method other than a comparative hearing and a subsequent decision in its favor, *i. e.* a settlement agreement executed by mutually exclusive applicants. Consequently a non-contingent divestiture condition, requiring Nelson principals to divest of attributable interests in the relevant license and permit will be specified.

11. Section II, Item 4 of FCC 301 (October 1986) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. Nelson, Martis and Hometown have not completed Item 4 correctly. Nelson's application gives only a route number as the residence address for its principals Lawrence W. Nelson, Pamela A. Nelson and Dallas C. Ingemunson. Martis' application gives a post office box number as the residence address of its sole principal, Peggy Jo Martis. Hometown's application gives only the road on which its principal Gerald M. Taylor resides. No number for Taylor's residence on that road is given. Accordingly, Nelson, Martis and Hometown will be required to submit amendments giving all the information required by Section II, Item 4 to the Administrative Law Judge within 30 days of the release of this Order.

12. *Other Matters.* NIUSA is a noncommerical educational applicant for the instant commercial allocation. In its response to Section III, Paragraph 2 of FCC Form 340, NIUSA indicates that its application is "contingent upon receipt of a grant from a charitable organization, the approval of the budget of a school or university or an appropriation from a state, county, municipality or other political subdivision." Although language in this section of the application requires that an applicant relying upon such funds advise the Commission when the funds have been committed or appropriated, NIUSA has failed to make such a showing. Consequently, we are uncertain as

to whether NIUSA has sufficient funds to construct and operate its proposed station, and an appropriate financial issue will be specified below.

13. In response to Section VI, FCC Form 301, the applicant below has indicated that it will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.208(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396A, the 5-point model EEO Program. The EEO program submitted by the following applicant is incomplete or is otherwise deficient in the manner described below. Accordingly, the listed applicant will be required to file an amended EEO Program with presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANT	DEFICIENCY
Knetsch	Failed to identify specific sources of recruitment specializing in minority candidates.

14. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENT FILED
M&M	December 4, 1987; March 29, 1988
Second City	May 2, 1988

15. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services to these populations, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

16. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the following applicants have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

APPLICANTS: Stevenson, Martis, Hometown.

17. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

18. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposals of the following applicants would provide coverage of the city sought to be served, as required by 47 C.F.R. § 73.315(a), and, if not, whether circumstances exist which warrant waiver of that Section: Knetsch, M&M, Second City and Hometown.

2. To determine, with respect to NIUSA, whether, in light of its response to Section III, paragraph 2, FCC Form 340, NIUSA is financially qualified.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: Stevenson, Martis, Hometown.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

19. IT IS FURTHER ORDERED, That for the reasons stated in paragraphs 2-4 hereinabove, the petition for reconsideration filed by Second City IS GRANTED to the extent indicated in those paragraphs and the previously returned amendment filed by Second City, 871005MC, IS REINSTATED *nunc pro tunc*.

20. IT IS FURTHER ORDERED, That Stevenson shall submit an amendment in accordance with paragraph 5 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. IT IS FURTHER ORDERED, That for the reasons stated in paragraph 6 hereinabove, the requests for waiver of 47 C.F.R. § 73.315 of the following applicants ARE DISMISSED as moot: NIUSA, Stevenson, Nelson.

22. IT IS FURTHER ORDERED, That for the reasons stated in paragraph 9 hereinabove, Nelson's request for a waiver of 47 C.F.R. § 73.3555 IS DENIED.

23. IT IS FURTHER ORDERED, That in the event of a grant of the Nelson application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, the permittee shall certify to the Commission that its principals Lawrence W. Nelson and Pamela A. Nelson have divested themselves of all attributable interests in WSPY(FM), Plano, Illinois and that its principal Dallas Ingemunson has divested himself of all attributable interest in the construction permit for the station authorized herein.

24. IT IS FURTHER ORDERED, That Nelson, Martis and Hometown shall submit amendments in accordance with paragraph 11 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

25. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant shall submit Section VI information in accordance with the requirements of 47 C.F.R. § 73.2080 to the presiding Administrative Law Judge: Knetsch

26. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: M&M, Second City.

27. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

28. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

29. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c) in person or by attorney, within 20 days of the mailing of this Order, not later than **August 31, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

30. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2), and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-362

In re Applications of

DAVID K. KUIPER (hereafter Kuiper)	File No. BPH-860506MY
FM GRAND RAPIDS LIMITED PARTNERSHIP (hereafter Partnership)	File No. BPH-860507PQ
DON H. BARDEN (hereafter Barden)	File No. BPH-860507PR
GRAND RAPIDS 98, INC. (hereafter 98, Inc.)	File No. BPH-860507PS
HAITH BROADCASTING CORPORATION (hereafter Haith)	File No. BPH-860507PT
STONE COMMUNICATIONS (hereafter Communications)	File No. BPH-860507QC
RICHARD CULPEPPER (hereafter Culpepper)	File No. BPH-860505MQ (PREVIOUSLY DISMISSED)

For a Construction Permit
for a New FM Station on Channel 255A
in Grand Rapids, Michigan

HEARING DESIGNATION ORDER

Adopted: July 13, 1988; Released: August 10, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station[1].

2. *Preliminary Matters*. On May 4, 1988, Culpepper filed a petition for reconsideration seeking reversal of the finding of April 15, 1988 by the FM Branch that the subject application was inadvertently accepted for tender.

3. Specifically, Culpepper's application was found untenderable because the legal boundaries of the community of license are not clearly and legibly defined on the contour map. This information is required pursuant to Item 4g, Appendix D, *Report and Order* in Docket 84-750, 50 Fed. Reg. 19936 (1985). The *Report and Order* indicates that the failure to provide this information will result in the application being returned as unacceptable for tender.

4. The Culpepper petition does not contest the determination by the FM Branch that Exhibit El, submitted in response to Item 10 (b) and (c) of FCC Form 301, Section V-B, failed to contain any legal boundaries for Grand Rapids, the principal community, nor did the exhibit provide any explanation why the boundaries were not depicted. Rather, the instant petition states that Culpepper, as "one of the very first Black station owners" and as an AM daytime broadcaster, "falls within the scope of a category of applicants who deserve the assistance of this Commission." and that his consulting engineer "concedes that a mistake was made and the community boundaries were not correctly outlined." However, according to petitioner, "there is no doubt that the Culpepper engineering proposal serves substantially all of the community of Grand Rapids, and, indeed, that it serves a larger portion of the city than would be served by some other applicants whose proposals have been accepted for tender and for filing." Culpepper asserts that its application was "substantially complete" as defined in *James River Broadcasting Corporation v. FCC*, 399 F.2d 581 (D.C. Cir. 1968) (James River), and is therefore tenderable.

5. The Commission, in the *Report and Order*, *supra*., adopted an FM application processing standard which requires a "hard look" approach as to certain critical elements that are essential to a determination that the application is "substantially complete." In Appendix D to the *Report and Order*, the Commission stated that, henceforth, it would follow a new "substantially complete" standard for determining whether or not an application should be given a reference number and processed. The Commission did not initiate a so-called "letter perfect" standard for receiving applications for processing, as it did, for example, in adopting a "strict compliance" standard for low-power television applications. *See* , *Low Power Television Service*, 51 RR 2d 476, 501, 502 (1982). It chose, instead, to carefully define, in Appendix D, what constitutes a substantially complete FM application under the new "window filing" procedures. Although administrative fairness requires full notice to parties whose rights may be affected by our policies, where such notice is afforded, the Commission may require strict compliance. *See* , *Salzer v. FCC*, 778 F.2d 869, 877 (D.C. Cir. 1985) (reversed on other grounds). To meet changed circumstances, we may modify our processing standards and substantial completeness requirements as they apply to FM, so long as we do so explicitly and with good reason and provide adequate notice. Id. at 873; *See* also *Radio Athens, Inc.* v. FCC, 401 F.2d 398 (D.C. Cir. 1968). Both requisites are present here. *In re Application of Star Signal Corporation, Memorandum Opinion and Order*, 1 FCC Rcd 450 (1986).

6. Because the processing rules which were the basis for the holding in *James River* have been dramatically changed, that case does not apply here to either the new FM processing rules or to "substantial completeness" thereunder. *See* , *Star Signal*, *supra*. In making these changes, we articulated the following justifications for taking a "hard look" approach in instituting the tender review of applications and for redefining "substantial completeness" under this new approach: Under our previous system, many errors in key portions of the applications remained undetected until considerable processing time and effort had already been expended. Discovery of fundamental errors so far along in the processing chain resulted in significant delays both in disposing of the flawed applications and in processing problem-free but

mutually exclusive applications as well as impeded the disposition of unrelated problem-free applications. Therefore, to prevent carelessly prepared, unprocessable applications from burdening the processing system, we now require applications to be substantially complete at tender or they will be returned, thereby losing their filing status. In order to assist applicants in satisfying our tender standards, we attached as Appendix "D" to the *Report and Order* a detailed list of the criteria utilized in evaluating the substantial completeness of applications. The Commission believes that important benefits can be obtained from this "hard-look" approach. First, the reduction of frivolous and speculative applications will enable us to expedite the processing of applications tendered by serious candidates who are "ready, willing and able" to rapidly bring service to the public. Secondly, streamlining our processing procedures has minimized the Commission's administrative costs, enabling us to make more efficient use of our limited staff and other resources. These benefits are critical to making the window filing and "first come/first serve" process work smoothly and with minimal delay in processing large numbers of applications. *Report and Order*, 50 Fed. Reg. at 19940.

7. A petition for reconsideration must be based upon newly discovered evidence or upon errors of fact or law in the action for which reconsideration is sought. *See* 47 C.F.R. §§ 1.106(c) and (d). In the absence of such a showing, reconsideration will not be granted for the purpose of reviewing matters which the Commission has already considered and resolved. *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *affd. sub nom. Lorain Journal co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert den.* 383 U.S. 967 (1966); *Employment practices of Charloue, North Carolina Stations*, 77 FCC 2d 1 (1980). Furthermore, in accordance with the *Report and Order* in Docket 84-750, 50 FR 19936 (1985), the only basis for reversing an earlier finding of untenderability is demonstration that the Commission erred in its earlier determination. *See* specifically Appendix D to the *Report and Order*, *supra*.

8. We have examined the instant petition and have determined that the Commission did not make an error in returning the Culpepper application as inadvertently accepted for tender. Accordingly, the Culpepper petition WILL BE DENIED.[2]

9. *Kuiper*. In response to Item 5 of Section V-G, FCC Form 301, Kuiper lists the overall antenna tower height as 364 feet above ground and 1049 feet above mean sea level, including obstruction lighting. In Exhibit E-6, the tower sketch, Kuiper depicts the tower site as 770' above mean sea level, yielding an overall tower height of 1134 feet above mean sea level. Taking official notice of information in Commission files we can verify that the tower sketch data provided by Kuiper is correct. Additionally, the radiation center AMSL specified in Item 6, Section V-B, FCC Form 301 (1049 feet) agrees with the figures specified in the antenna sketch. Therefore, the discrepancy can be confidently and reliably resolved. Moreover, using either figure, Kuiper's proposal fully complies with Commission rules. These errors have no effect on the acceptability of Kuiper's application which complies with all of our acceptance requirements. However, Kuiper shall amend his application by submitting the correct calculations to the presiding Administrative Law Judge.

10. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after June 27, 1986 the last date for filing minor amendments as of right. Under § 1.65 of the Commission's Rules, the amendments are accepted for filing. However, the applicants may not improve their comparative positions after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed:

APPLICANT	AMENDMENTS FILED
Kuiper	5/16/88
Partnership	8/13/86, 2/13/87, 8/14/87, 10/29/87, 2/3/88
Barden	4/30/87, 8/14/87, 8/25/87, 9/16/87, 9/25/87, 10/27/87, 12/23/87, 1/11/88, 1/14/88, 1/29/88, 2/29/88, 4/7/88, 5/27/88, 6/14/88
98, Inc.	5/7/87
Stone	7/13/87

11. Attempts to obtain Federal Aviation Administration (FAA) clearance throught the Commission's Antenna Survey Branch and the following applicants have been unsuccessful. Accordingly, since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding. *Applicant* : 98, Inc.; Communications

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified.

13. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: 98, Inc.; Communications

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That the Culpepper petition for reconsideration IS HEREBY DENIED and the petition for leave to amend IS DISMISSED AS MOOT.

15. IT IS FURTHER ORDERED, That Kuiper shall file the amendment, as specified in paragraph 9 above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

16. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Kuiper, Partnership, Barden, 98, Inc., Stone.

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

19. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **August 31, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

20. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The application of another applicant, American Radio Broadcasting Network, Inc., was returned on May 30, 1986. On May 18, 1987 American's petition for reconsideration was dismissed for failure to respond to official Commission correspondence pursuant to 47 C.F.R. § 73.3568(b); at the request of applicant by letter dated December 10, 1987, the application of 80-90 Limited was dismissed by the Chief, FM Branch on February 18, 1988.

[2] On May 13, 1988, Culpepper filed a Petition for Leave to Amend seeking to clearly define the legal boundaries of Grand Rapids. Based upon the foregoing, the Petition will be dismissed as moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company

Petition for Waiver of Section 65.702(c)

ORDER

Adopted: July 22, 1988; Released: July 26, 1988

By the Chief, Common Carrier Bureau:

1. On June 3, 1988, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West) petitioned for a waiver of Section 65.702(c) of the Commission's Rules, 47 C.F.R § 65.702(c).[1] US West's petition seeks to combine the rates of these three companies for rate of return monitoring purposes. We have received no oppositions to the petition.

2. US West plans to aggregate rates for these three companies in two steps, but asks the Commission to consider the aggregation completed, for purposes of its rate of return filings, as of July 18, 1988, the date Transmittal No. 165 took effect.[2] Transmittal No. 165 implements the first step of the two-step plan to aggregate rates, but does not fully aggregate all rates. US West expects to file the second step of its aggregation with its annual 1989 access filing. That second filing will provide for one set of rates for switched access products and services throughout the affected territories. Petition at 4. US West will, however, continue to file its rates on a company-specific basis until it submits its 1989 annual access filings.

3. US West asserts that the methodology these companies will use to calculate the unified rates will not result in an increase or a decrease in total revenue for the three companies in the aggregate, and claims that it will continue targeting the rates to the Commission's prescribed 12 percent rate of return. *Id.* It states that once the companies bring unified rates into effect, all rates charged by all companies will be targeted to recover a combined unified revenue requirement. Petition at 5. US West contends that, given the circumstances, the only rate of return measurement that makes sense under the Commission's rate of return rules is measuring the earnings of the three companies at the unified level at which their revenue requirement is aggregated.

4. Since US West is phasing in its regional level rates, the transitional rates will not directly correlate with state-by-state, company-by-company, or region-wide costs. Thus, US West seeks the instant waiver in order to use the region-wide, aggregated costs during the transition period. Considering that the phase-in sought by US West appears beneficial to its customers in that rates will not increase sharply and that there is no opposition to its request, we believe the US West petition for waiver should be granted.

5. Accordingly, IT IS ORDERED that the petition for waiver of Section 65.702(c) of the Commission's Rules, 47 C.F.R. § 65.702(c), filed by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 22, 1988

BELLSOUTH FILES PETITION FOR WAIVER OF SECTION 69.3 (a) OF THE COMMISSION'S RULES GOVERNING ANNUAL ACCESS TARIFF FILINGS

PLEADING CYCLE ESTABLISHED

On July 15, 1988, the BellSouth Telephone Companies filed a petition for waiver regarding the requirements of Section 69.3(a) of the Commission's Rules. Section 69.3(a) requires local exchange carriers to make annual access tariff filings on 90 days' notice to be effective January 1 of each year. BellSouth seeks a waiver of this requirement for the upcoming annual access tariff filing (1989 Filing) presently scheduled to be made on October 3, 1988, to become effective on January 1, 1989. In lieu thereof, BellSouth would make its 1989 Filing on December 30, 1988 with a scheduled effective date of April 1, 1989.

BellSouth notes that the Commission has instituted a Rule Making proceeding to determine whether its Part 69 rules should be modified to revise the annual access tariff filing requirements not only for the 1989 filing, but on a permanent basis. It asserts that the Commission is not likely to issue its order amending the rules soon enough to permit affected carriers to avoid the time-consuming work activities associated with the preparation of the 1989 Filing in October 1988 under the current rules. It states that, as a result, carriers must plan for two separate annual access tariff filings, based upon two different historical periods and two different test periods. BellSouth objects that the same individuals with the necessary expertise to prepare access tariff filings would have the burdensome task of preparing both filings.

Interested parties may file comments on the BellSouth waiver petition no later than August 12, 1988. Replies may be filed no later than August 22, 1988.

Copies of BellSouth's waiver petition may be obtained from the Commission's contract copier, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, N.W., Washington, D.C. 20554. A copy of the petition is also on file and available for public inspection in the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W. An original and five copies of all comments and replies must be filed, in accordance with Section 1.51(c) of the Commission's Rules. In addition, one copy of each comment or reply must be filed with ITS.

For further information contact Dan Grosh, Tariff Division (202) 632-6387.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-5

In the Matter of

Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies	RM-5206
Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use by any Part 94 Eligible	RM-5362
Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625 - 952.8375 MHz Band	RM-5178
Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations	RM-5383

ORDER

Adopted: July 6, 1988; Released: July 7, 1988

By the Chief, Private Radio Bureau:

1. The Commission has before it a Motion for Extension of Time filed by Digital Radio Networks, Inc. (Digital). Digital requests additional time to file a reply to various oppositions to its petition seeking reconsideration of our Report and Order in the above-captioned proceeding. Digital represents that none of the entities that filed oppositions to its petition for reconsideration object to the instant request for a brief extension of time.

2. Upon review of the submissions of counsel and the record in this proceeding, we conclude that the complex technical nature of the issues on reconsideration warrants a brief extension of time to reply to the oppositions. No party will be prejudiced by this action.

3. Therefore, pursuant to Sections 0.331 and 1.46 of our Rules, 47 C.F.R. §§ 0.331 & 1.46, IT IS HEREBY ORDERED that Digital's Motion for Extension IS GRANTED.

4. IT IS FURTHER ORDERED that all replies to the oppositions to the petition for reconsideration shall be filed by the close of business, Thursday, July 7, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 88-96

In the Matter of

Amendment of the Commission's Rules
Relative to Allocation of the
849-851/894-896 MHz Bands

ORDER EXTENDING TIME FOR REPLY COMMENTS

Adopted: July 27, 1988; Released: July 28, 1988

By the Office of Engineering and Technology:

1. The Puerto Rico Telephone Company (PRTC) has filed a *Motion for Extension of Time* requesting that the time for filing reply comments in the above-captioned proceeding be extended for thirty days.

2. The Notice of Proposed Rule Making in this proceeding was released April 27, 1988. The Notice established a comment date of July 1, 1988, and a reply comment date of August 1, 1988. PRTC states that the volume and complexity of the comments requires an extension to allow a proper analysis of this material.

3. The Commission concurs with PRTC that an extension of time is desirable to afford all interested parties sufficient time to prepare reply comments. However, due to our desire to proceed expeditiously in finalizing a decision in this proceeding, and our belief that a lesser extension will accommodate the needs of all parties, we are authorizing only a 15 day extension of time. Accordingly, IT IS ORDERED, that the time allowed for filing reply comments IS EXTENDED to August 16, 1988.

4. This action is taken pursuant to authority found in Section 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 302, and 303, and pursuant to Sections 0.31 and 0.241 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-79

PUBLIC NOTICE

Released: July 25, 1988

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON US WEST PETITION FOR INTERIM WAIVER

On July 19, 1988, US West filed a petition for interim waiver seeking permission to use procedures for protecting restricted customer proprietary network information (CPNI) that differ from those approved in the *BOC CPE Plans Order*, 3 FCC Rcd 412 (1988). US West proposes to use these alternate procedures for approximately nine months.

In the *BOC CPE Relief Order*, 2 FCC Rcd 143 (1987), *modified on reconsideration*, 3 FCC Rcd 22 (1988), the Commission relieved the Bell Operating Companies (BOCs) of the structural separation requirements governing their provision of customer premises equipment (CPE) and replaced those requirements with nonstructural safeguards. The Commission required the BOCs to submit plans describing how they would comply with these safeguards and delegated authority to the Chief of the Common Carrier Bureau (the "Bureau") to review these plans. Among the safeguards adopted in the *BOC CPE Relief Order* are rules pertaining to BOC use of CPNI. One such rule is that if a customer requests, BOCs must restrict access to that customer's CPNI to network services personnel who have no involvement in CPE sales.

In its compliance plan, filed April 13, 1987, US West proposed to protect restricted CPNI by "modify[ing] the software systems which maintain the CPNI so that a password would be required to obtain access to the CPNI of the customers who wish to restrict access." The Bureau approved this plan in the *BOC CPE Plans Order*. US West now claims that it will not be able to complete these software modifications until approximately the end of March, 1989. It seeks permission to implement alternate security methods during the interim period so that it may begin using unrestricted CPNI in its integrated marketing of CPE and network services.

US West proposes two methods for protecting CPNI during this interim period - one applicable to employees that target their marketing efforts to residential and small business customers, and the other applicable to employees that tend to market on an integrated basis to large business customers. In both cases, US West would place the notation "access denied for CPE sales" or similar verbiage on the data base records of customers that request restricted treatment of their CPNI. Employees in units that target residential and small business customers would be permitted to access data base systems containing CPNI but would be prohibited from "representing, promoting, or selling CPE" to any customer whose record was marked. US West also proposes to utilize this method on a permanent basis "in remote offices where it is uneconomical to maintain a separate network-only work force." Employees that tend to market CPE to large business customers (except, presumably those in remote offices) would be denied access to on-line systems containing CPNI but would be able to obtain unmarked CPNI records in hard copy form from network services-only personnel.

US West claims that the two interim methods it proposes "are not dissimilar from methods already approved in the CPNI plans of other BOCs and therefore presumably provide an acceptable level of confidentiality for restricted customer accounts." It further claims that granting the waiver it seeks would allow customers to benefit from the increased availability of efficient, integrated CPE/network service solutions.

Interested parties may file comments on US West's petition by August 4, 1988 and reply comments by August 9, 1988. Comments and reply comments must be filed with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy of all filings should be sent to Gary Phillips, FCC, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public records duplication, International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of US West's petition for interim waiver may be obtained from ITS by calling (202) 857-3800.

For further information contact Gary Phillips, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-326

In the Matter of

Access Tariff Filing Schedules

NOTICE OF PROPOSED RULE MAKING

Adopted: June 20, 1988; Released: June 21, 1988

By the Commission:

I. BACKGROUND AND DISCUSSION

1. Under our current Rules, local exchange carriers (LECs) during the next year would be required to prepare and file three major revisions of their interstate access tariffs to be effective within a four-month period. An increase in the End User Common Line (EUCL) charge for residential and single line business customers of 60 cents is scheduled to become effective December 1, 1988.[1] The Carrier Common Line (CCL) filing to reflect this change will be prepared and filed by the National Exchange Carrier Association (NECA) on behalf of all local telephone companies (who currently participate in the Common Line (CL) pool NECA administers). The annual 1989 access tariffs, updating and retargetting the LEC access tariff rates, including CCL, are required to be filed October 3, 1988, to be effective January 1, 1989.[2] Finally, the LECs also must revise their tariffs both to implement the final EUCL rate increase of 30 cents[3] and to initiate the Universal Service Fund and Lifeline Assistance Elements[4] (to help assure the universal availability of telephone service in high cost areas and among the needy) on April 1, 1989. In addition to again reducing the CCL rate, the LECs will also be permitted in that filing to file individual, de-pooled CCL rates for the first time.[5]

2. Any significant change in access charges, such as CCL reductions reflecting an increase in the end user or subscriber line charge, requires revisions in the rates the American Telephone and Telegraph Company (AT&T) charges. Thus, under the current schedule, AT&T would revise its long distance rates three times within four months, upon the same dates as the access tariff rate changes.

3. Under the current Rules, these access and long distance rates would, in turn, be replaced nine months later, when the annual 1990 access tariffs became effective January 1, 1990.

4. The various dates in this schedule came into being at different times to accomplish different, specific goals. In combination, though, this concatenation of tariff filings seems likely to impose significant and unnecessary burdens upon the LECs and AT&T, interested members of the public, and this Commission. A more consolidated schedule, with fewer effective dates, should reduce the burdens of preparing separate but interrelated filings, the number of filings that the interested public and this Commission must review, and the number of rate changes to which customers must adjust.

5. In addition, our experience with the annual access tariff filings has increasingly led us to the conclusion that Janaury 1 is not the most practical effective date for annual access tariff filings. The historical baseline year for annual access filings must necessarily end about six months before the tariff effective date, to allow the LECs to compile the data and file it upon the required 90 days' notice. With a January 1 effective date, this means that the historical data must typically be reported for the period of July 1 through June 30 prior to the October filing date. Because the LECs generally maintain data on a calendar year basis, the July 1 - June 30 period is an inconvenient baseline. It would appear more convenient for the LECs to use a calendar year historical baseline period and a July 1 - June 30 period for their projected data than the reverse, as is currently required.

6. The practical effects of an October through December review period also include a reduction of the time actually available to this Commission to review the tariffs and an increase in the difficulty of making needed corrections. This review period includes the Columbus Day, Veterans' Day, Thanksgiving, and Christmas holidays. The inherent difficulty for this Commission of reviewing the massive tariff filings, comments, and replies within the limited statutory period is inevitably compounded by the reduced number of working days. The schedule has similar effects on the LECs and commenters. Typically, the Common Carrier Bureau has adopted lengthy and detailed Orders identifying necessary revisions to the filed tariffs immediately before the Christmas holiday. Implementation of these revisions by the LECs must then be completed during the period between Christmas and New Year's in order to meet the January 1 effective date. While any access tariff filing schedule is likely to require overtime work by Commission staff to carry out effective review, and by LEC staff to implement revisions, it seems undesirable to require such efforts during the traditional end-of-the-year holiday season, when a different schedule is at least as practical.

II. PROPOSED RULE CHANGES

7. The current filing schedule presents an especially convenient time to shift to a midyear annual filing schedule. The rates which are scheduled to take effect on April 1, 1989, would remain in effect for only nine months if the annual 1990 access tariffs were to become effective as scheduled on January 1, 1990. Moreover, only three months of actual data under the new rates would be available by the time the LECs filed their revisions on October 3, 1989. We can reduce the number of required rate changes and obtain a longer period of experience under the new rates, without compromising the other goals of the access program, by moving to a July 1, 1990, effective date. We propose to use the July 1 effective date for the annual access tariffs in subsequent years.

8. We do not propose to revise the schedule for EUCL revisions, which was recommended to us by a Federal-State Joint Board, but we can reduce and consolidate the access filing schedule by moving the January 1, 1989, effective date for annual access tariffs to coincide with the April 1, 1989, date for the final EUCL rate step and the de-pooling of CCL rates. All of these revisions would be

made in a single filing upon 90 days' notice. AT&T could similarly implement necessary changes in its long distance rates by a single filing effective April 1, 1989, eliminating the need for a separate filing effective January 1, 1989. With the movement of the next annual filing to a midyear schedule, these rates would be filed to remain in effect for 15 months until July 1, 1990.

9. The change in the annual access tariff filing schedule also would require a conforming change in the date on which companies would be permitted to leave the NECA CCL pool. For Level II companies this would have the effect of changing the date upon which they would be able to leave the pool and be eligible to receive Transitional Support from January 1, 1990 to July 1, 1990. Section 69.612 (b) of this Commission's Rules, 47 C.F.R. § 69.612 (b). To reflect this change and maintain the full four year period for Transitional Support payments, we accordingly propose rule revisions to continue these payments to eligible Level II companies until June 30, 1994. To ensure consistency with our current approach, we similarly propose to revise the schedule for changing the method of calculating Long Term Support obligations currently provided for in Section 69.612 (a) of our Rules, 47 C.F.R. § 69.612 (a), to coincide with the new date for the phasing out of Transitional Support payments.

10. These revisions to access tariff filing schedules should be an improvement over current schedules for all concerned. In addition, the schedule changes proposed here should offer the same practical benefits whether or not the Commission ultimately decides to retain or replace the traditional rate-of-return form of regulation embodied in the access charge rules.[6] For example, the use of calendar year historical data would appear to be even more convenient for a "price cap" tariff filing, which is likely to rely more heavily upon historical rather than prospective data. The use of a July 1 effective date would thus set a natural schedule for filings based upon calendar year historical data.[7]

III. MISCELLANEOUS PROVISIONS

A. *Regulatory Flexibility Act Initial Analysis*

11. We certify that the Regulatory Flexibility Act[8] is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Notice* in the Federal Register. As part of our analysis of the proposal described in this Order, however, this Commission has considered the impact of the proposal on small telephone companies, *i. e.*, those serving 50,000 or fewer access lines.[9] The action proposed herein would have a beneficial economic impact on all such telephone companies because it would reduce the number of required access filings made by or on behalf of those companies, and thereby reduce their administrative costs.

B. *Paperwork Reduction Analysis*

12. The Rule Making proposed in this Notice has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure, or record retention requirements as contemplated under the statute. The Rule Making will not increase the collection of information burden imposed on the public.

C. *Ex Parte Requirements*

13. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. *See generally* Section 1.120(a) of this Commission's Rules. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission (1) releases a final Order; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* Section 1.1202(f) of this Commission's Rules. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* Section 1.1203 of this Commission's Rules.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* Section 1.1202(b) of this Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to this Commission's Acting Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously-filed written comments, memoranda, or filings in this proceeding must provide on the day of the oral presentation a written memorandum to the Acting Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and must state on its face that the Acting Secretary has been served with a copy and must also state by docket number the proceeding to which it relates. *See* Section 1.1206 of this Commission's Rules.

15. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, we may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of our reliance on such information is noted in the Order.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-203, and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 201-203, 403, and 5 U.S.C. § 553, NOTICE IS HEREBY GIVEN of proposed amendments to Part 69 of this Commission's Rules, 47 C.F.R. Part 69, in accordance with the proposals, discussion, and statement of issues in this Notice of Proposed Rule Making.

17. IT IS FURTHER ORDERED that, in accordance with the provisions of Section 1.419(b) of this Commission's Rules, 47 C.F.R. § 1.419(b), an original and seven copies of all comments, replies, pleadings, briefs, and other documents filed in this proceeding SHALL BE FURNISHED to this Commission and that one additional copy SHALL BE FURNISHED on the same date to the Commission's contract copier, International Transcription Service, Inc. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (so long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in this Commission's Docket Reference Room (Room 239) at our headquarters at 1919 M Street, N.W., Washington, D.C.

18. IT IS FURTHER ORDERED that comments on this Notice SHALL BE DUE not later than July 22, 1988 and that reply comments SHALL BE DUE not later than August 5, 1988.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX

Proposed Changes

47 C.F.R. Part 69 is proposed to be amended as follows:

(Material to be deleted is enclosed in [brackets]. New material is *underlined*.)

1. The authority citation for Part 69 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 would be amended by revising paras. (jj) and (kk) to read as follows:

Section 69.2 Definitions

* * * * *

(jj) Level II Contributors - A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than150 million in annual operating revenues that is not an association Common Line tariff participant, *that* files its own Common Line tariff effective [January 1, 1990] *July 1, 1990*, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (i.e., had a negative net balance) to the association Common Line pool in 1988.

(kk) Level II Receivers - A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than150 million in annual operating revenues that is not an association Common Line tariff participant, *that* files its own Common Line tariff effective [January 1, 1990] *July 1, 1990*, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (i.e., had a positive net balance) from the association Common Line pool in 1988.

3. Section 69.3 would be amended by revising paras. (a), (b), (e), and (f) to read as follows:

Section 69.3 Filing of access service tariffs

(a) - Except as provided in § 69.3(f) of this chapter, a tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of [January 1] *July 1*.

(b) - The requirements imposed by paragraph (a) of this section shall not preclude the filing of revisions to those annual tariffs that will become effective on dates other than [January 1] *July 1*.

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such tariff must comply with the requirements hereinafter provided:

* * * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the Association not later than December 31 of the preceding year, if such company or companies did not file such a tariff in the preceding annual period or cross - reference Association charges in such preceding period that will not be cross - referenced in the new tariff.

* * * * *

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective April 1, 1989 shall notify the association not later than August 30 of the preceeding year that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective [January 1, 1990] *July 1, 1990* or thereafter pursuant to § 69.3(a) shall notify the association not later than [June 30] *December 31* of the preceeding year that it will no longer participate in the association tariff. A telephone company or group of affiliated tele-

phone comapnies that elects to file its own Carrier Common Line tariff for one of its study arreas shall file its own Carrier Common Line tariffs for all of its study areas.

(f) A tariff for access services shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of [January 1] *July 1*. A tariff for access service provided by telephone comapnies with 50,000 lines or fewer in a study area, as determined under § 67.611 of this chapter, may be filed for a biennial period, with a minimum of 90 days notice, to begin on [January 1] *July 1* of any odd-numbered year. For purposes of computing end user charge access elements and carrier's carrier charges other than for the Carrier Common Line element to be effective on [January 1] *July 1* of any even-numbered year, the association may propose rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under Part 61 of this chapter.

* * * * *

4. Section 69.201 would be amended to read as follows:

§ 69.201 General

Notwithstanding §§ 69.4, 69.104 through 69.108 and 69.111 through 69.112, charges for the access elements described in this subpart shall be computed in accordance with this subpart during the period commencing January 1, 1984 and ending [May 31, 1990] *June 30, 1990*. This subpart does not supersede § 69.107(f) through (h).

* * * * *

5. A new Section 69.209 would be added and read as follows:

§ 69. 209 Annual 1989 access tariff filings

Notwithstanding §§ 69. 3, tariffs for access service shall be filed to be effective April 1, 1989 for a period extending through June 30, 1990. Such tariffs shall be filed so as to provide a minimum of 90 days notice.

* * * * *

6. Section 69.606 would be amended by revising para. (b) to read as follows:

§ 69.606 Computation of average schedule company payments

* * * * *

(b) The association shall submit a proposed revision of the formula for each annual period subsequent to December 31, 1986 or certify that a majority of the directors of the association believe that no revisions are warranted for such period on or before [June 30] *December 31* of the preceeding year.

* * * * *

7. Section 69.612 would be amended by revising paras. (a) and (b) to read as follows:

§ 69.612 Long term and transitional support

A telephone company that does not participate in the association Common Line tariff shall have computed by the association: (a) Long Term Support Obligation

* * * * *

(1) For the period from April 1, 1989 through [December 31, 1993] *June 30, 1994*, the Long Term Support payment obligation shall be funded by all telephone companies that are not association Common Line tariff participants and do not receive transitional support pursuant to § 69.612(b) . . .

(2) Beginning [January 1, 1994] *July 1, 1994* and thereafter, the Long Term Support payment obligation shall be funded by each telephone company that files its own Carrier Common Line tariff and does not receive transitional support . . .

(b) Transitional Support. (1) Telephone Companies categorized as Level I and Level II Receivers that file their own Common Line tariffs effective April 1, 1989 shall receive Transitional Support for a four year period commencing April 1, 1989. Level II Receivers that file their own Common Line tariffs effective [January 1, 1990] *July 1, 1990* shall receive Transitional Support for a four year period commencing [January 1, 1990] *July 1, 1990*. Transitional Support for each of these telephone companies shall be computed on the basis of its net revenues less revenue requirement amounts for 1988 (adjusted for the additional revenues resulting from an increase in End User Common line charges to3.50). Transitional Support for these telephone companies during the transition period shall be as follows:

Year 1 - 80% of the adjusted 1988 frozen amount
Year 2 - 60% of the adjusted 1988 frozen amount
Year 3 - 40% of the adjusted 1988 frozen amount
Year 4 - 20% of the adjusted 1988 frozen amount

(2) For the period from April 1, 1989 through [December 31, 1993] *June 30, 1994*, the Transitional Support Fund shall be funded by all telephone companies or groups of affiliated telephone companies that are not asso-

ciation Common Line tariff participants and do not qualify under § 69.612(b)(1) for Transitional Support payments . . . .

FOOTNOTES

[1] Section 69.203(a) of this Commission's Rules, 47 C.F.R. § 69.203(a).

[2] Section 69.3(a) of this Commission's Rules, 47 C.F.R. § 69.3(a).

[3] Section 69.203(a) of this Commission's Rules, 47 C.F.R. § 69.203(a).

[4] Section 69.5(d) of this Commission's Rules, 47 C.F.R. § 69.5(d).

[5] Section 69.612 of this Commission's Rules, 47 C.F.R. § 69.612.

[6] See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Notice of Proposed Rule Making, 2 FCC Rcd 5208 (1987).

[7] Our proposal does not, of course, affect the statutory obligation of carriers to charge just and reasonable rates. We recognize that the current rates were developed using projections of the cost and demand levels that carriers expected during 1988. If the instant proposal is adopted by this Commission, we expect that AT&T and the local exchange carriers will make such rate adjustments as may be necessary to ensure that their rates are just and reasonable, and thus are designed to produce returns at their authorized levels, during the entire 15-month period that they would be in effect. We propose to instruct the Common Carrier Bureau to make any necessary interim adjustments to the carriers' rates should carriers fail to initiate such adjustments themselves.

[8] 5 U.S.C. § 601 et seq. (1987).

[9] Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies wherever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies — Transmittal No. 184

Revisions to Tariff F.C.C. No. 2

ORDER

Adopted: July 22, 1988; Released: July 25, 1988

By the Chief, Common Carrier Bureau:

1. On May 12, 1988, the Ameritech Operating Companies (Ameritech) filed the above-referenced transmittal proposing, *inter alia*, to rename three special access services and one rate element.[1] The Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a petition to reject or suspend the proposed tariff revisions and Ameritech filed an opposition to that petition.[2] The tariff is scheduled to become effective July 26, 1988.

2. Ad Hoc contends that the proposed tariff revisions would threaten its ability to monitor tariff changes and compare rates for like services on both a federal and state level, as well as among different carriers. [3] Ad Hoc also argues that these same proposed revisions would undermine the Commission's interest in encouraging consistency and uniformity in tariff structures.[4] Ameritech maintains that its proposed revisions will create uniform names for identical services.[5] Ad Hoc challenges this assertion, arguing that true uniformity will not be achieved until the Commission requires all carriers to agree on standard rate element and service names. It contends that until such agreement is reached, all current terms and definitions should be retained.[6] Ad Hoc concludes that Ameritech's proposed revisions will set its tariffs apart from those of other carriers and will hinder both the effective comparison of rates and services by customers and efficient regulation by the Commission.

3. Ameritech replies that it merely seeks uniformity for its own customers through the proposed revisions.[7] It claims that implementation of the proposed revisions will permit customers to compare similar services enabling them to select a service more easily. Ameritech also disputes Ad Hoc's argument that the Commission has a policy requiring uniformity in the naming of rate elements and services on a nationwide basis. Ameritech maintains that the *Private Line Guidelines Order* requires only that similarly named rate elements in the same tariff be similarly defined. Therefore, it concludes, the *Private Line Guidelines Order* is inapplicable to Ameritech's proposed revisions.

4. The Common Carrier Bureau has reviewed Ameritech's proposed tariff revisions, Ad Hoc's petition, and Ameritech's reply. We conclude that no compelling arguments have been presented that the tariff proposal is patently unlawful so as to require rejection and that no question has been presented that would warrant an investigation at this time.[8]

5. Accordingly, IT IS ORDERED that the petition to reject filed by Ad Hoc Telecommunications Users Committee IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Ameritech proposes to change the names of three special access services -- Voice Grade Service (to be renamed Direct Analog Service), Digital Data Service (to be renamed Direct Digital Service), and High Capacity Service (to be renamed Direct High Capacity Service). It also proposes to change the name of one rate element -- Channel Termination -- to Local Distribution Channel.

[2] Ad Hoc Petition to reject or suspend, filed May 27, 1988 (Ad Hoc Petition); Ameritech Opposition to Petition To Reject or Suspend, filed June 9, 1988 (Ameritech Petition).

[3] Ad Hoc Petition at 2.

[4] *Id.*, *citing* Private Line Rate Structure and Volume Discount Practices, 97 FCC 2d 923 (1984) (*Private Line Guidelines Order*).

[5] Ameritech Description and Justification (D&J) at 1.

[6] Ad Hoc Petition at 4.

[7] Ameritech Opposition at 1-2.

[8] We disagree, however, with Ameritech's contention that the *Private Line Guidelines Order* applies only to services and rate elements in the same tariff. The Commission intended the guidelines to apply to all tariffs submitted by a carrier. The Commission stated that "[r]ate regulation is aided by the ability to make in-kind comparisons (comparing like rate elements in *different* tariffs)." 97 FCC 2d at 924. (emphasis added). Therefore, Ameritech's interpretation, in this respect, is erroneous.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-347

In the Matter of

Amendment of Section 73.202(b), RM-5891
Table of Allotments,
FM Broadcast Stations.
(Bastrop and Burnet, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 20, 1988 **Released: August 11, 1988**

By the Deputy Chief, Policy and Rules Division:

1. At the request of Central Texas Broadcasters, Inc. (petitioner), licensee of Station KSSR(FM),[1] Channel 296A, Bastrop, Texas, the Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 5592 (1987), proposing the substitution of Channel 296C2 for Channel 296A and modification of its license to specify operation on the higher class co-channel. In order to accomplish the Bastrop substitution, Station KHLB-FM (Channel 296A) at Burnet, Texas was required to substitute Channel 295A for Channel 296A. Petitioner and Hawkins Broadcasting, Inc. (Hawkins), licensee of Station KHLB-FM at Burnet, submitted supporting comments.

2. As stated in the *Notice*, the Burnet substitution must be made in order to permit the Bastrop substitution. The channel substitutions can be accomplished in compliance with the minimum spacing requirements of Section 73.207(b) of the rules. Channel 296C2 can be allotted to Bastrop at the petitioner's proposed site (30-02-30 and 97-32-12), which is 22.9 kilometers (14.2 miles) west of the community. Channel 295A at Burnet requires a site restriction of 6.7 kilometers (4.2 miles) west of the city.[2] This restriction is necessary to avoid a short spacing to Channel 294C at Granbury, Texas. [3] The transmitter sites for Stations KSSR(FM) and KHLB-FM must be relocated.

3. Parties have reached an agreement whereby Station KHLB-FM will be compensated for its channel and transmitter site changes, as required by Commission policy.

4. Since the communities are located within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence of the Mexican government has been obtained.

5. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station KSSR(FM) to specify operation on Channel 296C2 in lieu of Channel 296A.

6. We believe the public interest would be served by the substitution of Channel 296C2 for Channel 296A at Bastrop, Texas, as that community's first wide coverage area FM station. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 22, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Bastrop, Texas	296C2
Burnet, Texas	223A, 295A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the licenses of Station KSSR(FM), Bastrop, Texas and Station KHLB-FM, Burnet, Texas, ARE MODIFIED, to specify operation on Channel 296C2 (in lieu of Channel 296A) and Channel 295A (in lieu of Channel 296A), respectively, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The proceeding was initiated by Colorado River Broadcasters, Inc., the former permittee of Station KSSR(FM).

[2] The coordinates for the proposed site are 30-44-15 and 98-17-39.

[3] Previously the Commission issued a construction permit to Station KFII(FM) at Granbury. The permit was subsequently cancelled and an application for review of the Commission's action is pending. This site restriction protects the coordinates for the vacant allotment and the site specified in the permit.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-373

In the Matter of

Amendment of Part 90 of the Commission's Rules to Permit Business Radio Use of Certain Channels in the 150 MHz Band — RM-6276

NOTICE OF PROPOSED RULE MAKING

Adopted: July 20, 1988; Released: August 11, 1988

By the Commission:

I. INTRODUCTION

1. The Commission has before it a *Petition for Rule Making (NABER Petition)*, and the comments filed in response thereto, concerning the use of certain private land mobile channels in the 150 MHz band that are currently unavailable for assignment in certain areas.[1] We also have before us a second *Petition for Rule Making (ITA Petition)* that concerns the same channels.[2] By this *Notice of Proposed Rule Making*, we are proposing to assign 22 of these channels to the Business Radio Service for use in the Virgin Islands and Puerto Rico. We are also proposing to assign twelve channels to the Business Radio Service for use in certain areas of the continental United States. Further, we are proposing several possible options for increasing the number of high power paging channels available to the Business Radio Service. This action is taken to promote more intensive use of available private land mobile spectrum in the congested 150 MHz band.

II. BACKGROUND

2. Prior to 1971, private land mobile channels in the 150 MHz band were spaced at 30 kHz. In 1971, the Commission permitted some private land mobile radio services to use channels centered between existing channels, *i. e.*, 15 kHz adjacent to the original channels. [3] This decision recognized, however, that 15 kHz channel spacing raises concerns about adjacent channel interference. The Commission, therefore, adopted an adjacent channel minimum mileage separation requirement for stations operating on channels spaced at 15 kHz.[4] This separation requirement somewhat complicated the coordination process for new stations, particularly, if the adjacent channels were assigned to stations in different radio services. In those cases, interservice coordination would be needed to ensure that the separation requirement was satisfied. In 1971, however, the Business Radio Service did not have a coordination requirement for stations operating in the 150 MHz band. Because of this, the Commission decided not to assign any 15 kHz offset channels that were immediately adjacent to channels already assigned to the Business Radio Service.

3. The *NABER Petition* addresses that decision. Specifically, NABER identifies several 15 kHz offset channels that are currently not assigned to any radio service in certain areas and requests that we now allow these channels to be used by eligibles in the Business Radio Service. NABER also requests that high power paging be permitted on some of these channels. Finally, NABER requests that we affirm that the 1950 census will continue to be used for determining the use of certain channels in the 150 MHz band.

4. In response to the *NABER Petition*, we received statements of opposition from Message Center Beepers, Inc. (Message Center) and the International Taxicab Association (ITA).[5] NABER replied separately to each commenter. On April 20, 1988, ITA filed its petition concerning some of the same 15 kHz offset channels that NABER has identified. Specifically, ITA requests that these channels be made available to the Taxicab Radio Service instead of the Business Radio Service. Because this proposal conflicts with NABER's, we are incorporating the *ITA Petition* into this docket as a counter proposal and will consider both petitions concurrently.

ISSUES/DISCUSSION

5. We have the following issues before us:

1) Should the channels in question be made available to private land mobile users?

2) If so, which radio service(s) should they be assigned to?

3) Should we allow high power paging on some of these channels?

4) Should the population data from the 1950 census continue to be used in the assignment of these channels?

Each of these issues will be explored below.

Issue 1 : The Use of These Channels

6. As noted in paragraph 2 *supra*, the 1971 *Order* did not assign the channels under consideration mainly because the Business Radio Service did not have a coordination requirement for stations in the 150 MHz band. We were therefore concerned about the potential for interference to stations operating on channels adjacent to the 15 kHz offset channels. This concern was reiterated in 1972 when we said "in an uncoordinated and highly shared radio service such as the Business Radio Service at 150 MHz, the geographical spacing needed to permit use of 15 kHz spaced assignments with equipment standards based on 30 kHz spacing, would be extremely difficult to maintain."[6]

7. In PR Docket No. 83-737,[7] we certified certain entities to act as frequency coordinators in the private land mobile radio services. Specifically, we certified NABER as the frequency coordinator for the Business Radio Service and required NABER to provide frequency recommendations for most Business Radio Service applications, including applications for the 150 MHz band.[8] Because Business Radio Service use of the 150 MHz is now adequately

coordinated, we can propose to remove the restrictions that apply to the subject channels and permit their use by private land mobile entities.

8. Because the commenters to the petitions limited their discussions to the specific offset channels identified by NABER, the scope of this proposal concerns primarily those channels. We request comments, however, on an alternative that would allow the use of all 15 kHz offset channels in the 150 MHz band that are adjacent to channels assigned to the Business Radio Service. Such an action would create many additional channels in the congested 150 MHz band. Although the heavy use of Business Radio Service channels in the 150 MHz band would limit the availability of the offset channels to new users, we ask whether the presence of a frequency coordinator for the Business Radio Service in the 150 MHz band is sufficient justification to make all 15 kHz offset channels available on a routine basis.

Issue 2 : The Assignment of These Channels

9. We now turn to the issue of which radio service should be permitted to use the subject offset channels. The *NABER Petition* identifies two sets of offset channels that should be made available to the Business Radio Service in certain areas. The first set that we will investigate contains channels that are currently not available for use by any radio service in certain areas of the continental United States. Prior to the 1971 decision to allow the use of 15 kHz offset channels, one segment of the 150 MHz band was assigned as indicated below.

channel	assigned to
152.270 MHz	Taxicab nationwide
152.300	Taxicab inside SMAs - Business Outside SMAs
152.330	Taxicab nationwide
152.360	Taxicab inside SMAs - Business Outside SMAs
152.390	Taxicab nationwide
152.420	Taxicab inside SMAs - Business Outside SMAs
152.450	Taxicab nationwide

A similar arrangement existed for channels at 157 MHz.[9]

10. The 1971 decision then created 15 kHz offset channels that were placed directly between the 30 kHz channels listed above. These new offset channels, therefore, were adjacent on one side to channels assigned nationwide to the Taxicab Radio Service. On the other side, the new offset channels were adjacent to channels assigned to the Taxicab Radio Service inside of Standard Metropolitan Areas (SMAs) having populations greater than 50,000 according to the 1950 census and to the Business Radio Service outside of those SMAs. This arrangement is depicted in the table below with the 15 kHz offset channels in bold. (Again, a similar arrangement exists for channels at 157 MHz.)

channel	*assigned to*
152.270	MHz Taxicab nationwide
152. 285	*Taxicab inside SMAs - not available outside SMAs*
152.300	Taxicab inside SMAs - Business outside SMAs
152. 315	*Taxicab inside SMAs - not available outside SMAs*
152.330	Taxicab nationwide
152. 345	*Taxicab inside SMAs - not available outside SMAs*
152.360	Taxicab inside SMAs - Business outside SMAs
152. 375	*Taxicab inside SMAs - not available outside SMAs*
152.390	Taxicab nationwide
152. 405	*Taxicab inside SMAs - not available outside SMAs*
152.420	Taxicab inside SMAs - Business outside SMAs
152. 435	*Taxicab inside SMAs - not available outside SMAs*
152.450	Taxicab nationwide

In keeping with the 1971 decision not to assign 15 kHz offset channels that were adjacent to Business Radio Service channels, the subject offset channels were not made available for use in areas outside of the defined SMAs. The subject offset channels are assigned, however, to eligibles in the Taxicab Radio Service for use inside the defined SMAs.

11. NABER now requests that the six offset channels depicted in the above table and six corresponding offset channels in the 157 MHz band be made available to the Business Radio Service for use outside the defined SMAs. NABER states that such an action would "alleviate some congestion in the 150 MHz band currently experienced in many areas."[10] Because the Business Radio Service has use of the adjacent channels in areas outside the defined SMAs, NABER believes that the Business Radio Service should also have use of these twelve channels in those same areas.[11] ITA opposes this proposal. ITA points out that the Taxicab Radio Service has only four pairs of 150 MHz channels available nationwide. These nationwide Taxicab Radio Service channels are also 15 kHz adjacent to the twelve subject channels. Because the Rules require a seven mile separation between taxicab and business stations operating on channels 15 kHz removed, ITA is concerned that NABER's proposal would restrict the licensing of taxicab systems on their nationwide channels.[12] In its reply comments, NABER rebuts ITA's argument stating that ITA is attempting to avoid simple coordination procedures conducted by all frequency coordinating committees relating to 15 kHz spaced channels and shared channels.[13]

12. As an alternative to NABER's proposal, ITA requests that the Commission remove the geographical restrictions on the use of the subject channels and extend their availability to the Taxicab Radio Service for use outside the defined SMAs.[14] For support, ITA states that only eight VHF channels (four channel pairs) are available to the Taxicab Radio Service on a nationwide basis and that nine other VHF channel pairs are available for use only within the defined SMAs.[15] ITA states that the country's demographics have changed greatly since 1950. Many areas that were not included in the 1950 list of cities with populations greater than 50,000 are now major urban areas. These areas, however, are limited to the four VHF channel pairs.[16] Further, ITA points out that two-thirds of all taxicab companies are located in municipalities of less than 50,000 population.[17] Again, taxicab companies in these areas are limited to the four VHF channel pairs. ITA states that these facts call for the Commission to

assign the subject channels to the Taxicab Radio Service nationwide, thus providing that service with needed spectrum relief.[18]

13. Both ITA and NABER assert that the radio services they represent require spectrum relief in the 150 MHz band. In arguments presented by both NABER and ITA, the needs of both the Business Radio Service and the Taxicab Radio Service are described. Because both services have shown need and because taxicab companies are eligible as businesses to use channels assigned to the Business Radio Service, we are proposing to assign all twelve channels to the Business Radio Service. This will avoid any arbitrary nation-wide division of channels. In this way, we can provide needed spectrum relief to a greater number of radio users. However, we must be assured of the ability of the frequency coordinator for the Business Radio Service to account for the needs of taxicab companies when making frequency recommendations. We call for comments on this approach and, in the alternative, on assigning a portion of these channels to other radio services, including the Taxicab Radio Service.

14. We now turn to the second set of offset channels discussed in the *NABER Petition*. NABER identifies twenty-two offset channels that are currently not available for use by any radio service in Puerto Rico and the Virgin Islands and requests that they be provided to the Business Radio Service. These offset channels are currently assigned in the continental U.S. to eligibles in the Automobile Emergency, Highway Maintenance, and Forestry Conservation Radio Services.[19] Channel assignments differ, however, in Puerto Rico and the Virgin Islands. In those territories, the 22 subject offset channels are adjacent to channels available to the Business Radio Service. In accordance with the 1971 decision, these 22 channels are therefore unavailable for assignment in those territories. NABER asks that we remove this restriction and assign these channels to the Business Radio Service.

15. No commenter opposed this proposal. Again, these channels are currently not available for assignment because of the 1971 decision to reserve channels 15 kHz removed from the Business Radio Service channels. Because we now have a frequency coordinator for the Business Radio Service in the 150 MHz band, we agree that these channels can now be assigned. Unlike the proposal regarding the continental United States channels, Business Radio Service use of these channels will not affect any other radio service because all adjacent channels are assigned to the Business Radio Service. We therefore propose to assign these channels to the Business Radio Service.[20] We invite comments, however, that address the need for additional channels in these territories by other private land mobile radio services and will consider proposals to assign channels to those other services.

Issue 3 : ***High Power Paging Operations***

16. NABER requests that we allow high power paging on two of the continental U.S. offset channels and on five of the Puerto Rico and Virgin Island offset channels. NABER requests that these paging operations be permitted to 350 watts transmitter output power. NABER states that additional paging channels are necessary to alleviate congestion on the four VHF paging channels currently available, particularly 152.480 MHz, which is the only one of these channels on which 350 watts output power is permitted.[21]

17. Message Center opposes the proposal and claims that NABER did not demonstrate any substantive need for 150 MHz high power paging in the non- SMA areas that could not be satisfied with available UHF paging channels.[22] Message Center also claims that NABER did not demonstrate that high power paging would not cause an unacceptable level of interference to 15 kHz adjacent channels.[23] For these reasons, Message Center recommends that the Commission deny that portion of the *NABER Petition* that requests additional high power VHF paging channels in the Business Radio Service.[24] ITA also opposes this proposal, citing the same basic reasons as Message Center.[25] ITA contends that the proposed high power paging operation is inherently incompatible with technical and operational parameters of two-way operations in the Taxicab service.[26]

18. Our experience confirms NABER's statement that the current high- power paging channel, 152.480 MHz, is highly congested. Therefore, we will propose to designate two offset channels for high-power paging in the continental U.S. and to designate five offset channels for high power paging in Puerto Rico and the Virgin Islands. We are, however, concerned that these high-power operations have the potential to cause interference to taxicab stations operating on the adjacent channels. We therefore ask commenters to discuss the potential for interference and to provide any possible remedies that may reduce the potential for interference.

19. We also ask commenters if a better option for providing additional high power paging channels to the Business Radio Service would be to increase the maximum permitted power on those channels already reserved for paging operations. (*See* note 21 *supra*.) In particular, operations on 157.740 MHz are currently limited to 75 watts. The adjacent channel relationship for this channel, however, is very similar to that of 152.480 MHz, which has a maximum permitted power of 350 watts. We ask therefore whether we should increase the maximum permitted power on 157.740 MHz, as well as the other Business Radio Service VHF paging channels, to 350 watts.[27] Finally, another possibility would be to permit high-power paging on offset channels that are adjacent only to channels already assigned to the Business Radio Service. (*See* paragraph 8 *supra*.) This action would eliminate any possible interference to stations assigned to other radio services. We ask commenters to discuss these options so that we may determine the best course for providing additional high-power paging channels to the Business Radio Service.

Issue 4 : ***The 1950 Census Data***

20. In its petition, NABER urges the Commission to affirm that the 1950 census data will continue to be used when determining the usage of particular channels.[28] ITA, on the other hand, states that using 1950 data limits taxicab use of needed VHF spectrum in areas outside the 1950 SMA areas where the Taxicab Radio Service has significant demand for spectrum.[29] ITA notes that the Commission routinely, but not frequently, grants waivers to permit Taxicab Radio Service eligibles to use these channels in the restricted areas. ITA states that the need for repeated waivers highlights the need to modernize or abolish the rule.[30]

21. In licensing Taxicab and Business users on the subject 150 MHz channels, the Commission has consistently relied on a single list of SMAs.[31] If we were to update this list whenever new census data becomes available, the dis-

tribution of these channels between the two services could be in a constant state of flux. Our preliminary assessment of the issue dictates that we continue to retain the listing now in use. We ask for additional comment on this issue, however, and will consider the possible elimination of this census reference if the record supports such an action.

Initial Regulatory Flexibility Analysis

Reason for Action

22. The Commission is proposing these rule changes to (1) permit Business Radio Service eligibles (including taxicab companies) to utilize additional 150 MHz channels in Puerto Rico and the Virgin Islands; and (2) permit Business Radio Service (including taxicab companies) to use additional 150 MHz channels in areas outside of SMAs of 50,000 or more population in accordance with previously defined boundaries. This action will promote more intensive use of the available private land mobile spectrum in the congested 150 MHz band and open new opportunities for private carrier paging operations.

Legal Basis

23. Sections 4(i), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended.

Reporting, recordkeeping and other compliance requirements

24. No new requirements will be imposed upon licensees because of this action.

Federal rules which overlap, duplicate or conflict with this rule

25. None.

Description, potential impact, and number of small entities involved

26. Small businesses and taxicab companies would be positively affected by this proposal because the Commission is proposing to make more radio channels available to these entities. This would help to relieve congestion on existing channels and permit greater operational efficiency for businesses and taxicab companies. The number of small entities that will be affected is unknown.

Any significant alternatives minimizing the impact on small entities and consistent with the stated objectives

27. As an alternative, the Commission could have proposed to provide some of the subject channels to the Taxicab Radio Service. This alternative, which would not have had a lesser impact to small entities than the one ultimately proposed, was rejected because by providing the subject channels to the Business Radio Service, the Commission is making these channels available to the maximum number of potential users, including taxicab companies.

PaperworkReduction Act Statement

28. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

PROCEDURAL MATTERS

29. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

30. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion to the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

31. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested parties may file comments on or before **September 29, 1988,** and reply comments on or before **October 14, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

32. In accordance with the provisions of Section 1.419 of the Commission's Rules, 47 C.F.R. Section 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, N.W., Washington, D.C.

33. For further information concerning this Rule Making, contact Michael Lewis or Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Room 5126, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX

47 C.F.R. Part 90 is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 C.F.R. § 90.75 is proposed to be amended by revising the frequency table in paragraph (b) by adding the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 151.490, 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

Business Radio Service Frequency Table

* * * * *

150.815	do	8
150.830	Base	8,10,12
150.845	Base	or mobile 8
150.860	Base	8,10,12
150.875	Base	or mobile 8
150.890	Base	8,10,12
150.905	Base	or mobile 8
150.920	Base	8,10,12
150.935	Base	or mobile 8
150.950	Base	8,10,12
150.965	Base	or mobile 8
150.995	do 8	
151.010	do 8	
151.025	do 8	
151.040	do 8	
151.055	do 8	
151.070	do 8	
151.085	do	8
151.100	do	8
151.115	do	8
151.130	do	8
151.145	do	8
151.160	do	8
151.175	do	8
151.190	do	8
151.205	do	8
151.220	do	8
151.235	do	8
151.250	do	8
151.265	do	8
151.280	do	8
151.295	do	8
151.310	do	8
151.325	do	8
151.340	do	8
151.355	do	8
151.370	do	8
151.385	do	8
151.400	do	8
151.415	do	8
151.430	do	8
151.445	do	8
151.460	do	8
151.475	do	8
151.490	do	8
151.625	do	1,3

* * * * *

151.955	do -	
152.285	do	9
152.300	do	9
152.315	do	9
152.345	do	9
152.360	do	9
152.375	do	9
152.405	do	9
152.420	do	9
152.435	do	9
152.480	Base	10,11,12

* * * * *

154.625	Base	10,11,12
157.545	Base or mobile	9
157.560	do	9
157.575	do	9
157.605	do	9
157.620	do	9
157.635	do	9
157.665	do	9
157.680	do	9
157.695	do	9
157.740	Base	10,11,12,16

* * * * *

3. 47 C.F.R. § 90.93 is proposed to be amended by revising the frequency table in paragraph (b) by changing the limitations for the frequencies 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665 and 157.695 as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

Taxicab Radio Service Frequency Table

* * * * *

152.285	do	1,2
152.300	do	1,2
152.315	do	1,2
152.330	do	-
152.345	do	1,2
152.360	do	1,2
152.375	do	1,2
152.390	do	-
152.405	do	1,2
152.420	do	1,2
152.435	do	1,2
152.450	do	-
152.465	do	11
157.530	Mobile	-
157.545	do	1,2
157.560	do	1,2
157.575	do	1,2
157.590	do	-
157.605	do	1,2
157.620	do	1,2
157.635	do	1,2
157.650	do	-
157.665	do	1,2
157.680	do	1,2
157.695	do	1,2
157.710	do	-

* * * * *

4. 47 C.F.R. § 90.555 is proposed to be amended by revising the frequency table in paragraph (b) by changing service and limitation entries for the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 151.490, 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 as follows:

§ 90.555 Combined frequency listing.

* * * * *

150.815	IB,LA	IB use only in PR/VI
150.830	IB,LA	Do, paging only
150.845	IB,LA	IB use only in PR/VI
150.860	IB,LA	Do, paging only
150.875	IB,LA	IB use only in PR/VI
150.890	IB,LA	Do, paging only
150.905	IB,LA	IB use only in PR/VI
150.920	IB,LA	Do, paging only
150.935	IB,LA	IB use only in PR/VI
150.950	IB,LA	Do, paging only
150.965	IB,LA	IB use only in PR/VI
150.980	IP	Oil spill
150.995	IB,PH	IB use only in PR/VI
151.010	IB,PH	Do
151.025	IB,PH	Do
151.040	IB,PH	Do
151.055	IB,PH	Do
151.070	IB,PH	Do
151.085	IB,PH	Do
151.100	IB,PH	Do
151.115	IB,PH	Do
151.130	IB,PH	Do
151.145	IB,PO	Do
151.160	IB,PO	Do
151.175	IB,PO	Do
151.190	IB,PO	Do
151.205	IB,PO	Do
151.220	IB,PO	Do
151.235	IB,PO	Do
151.250	IB,PO	Do
151.265	IB,PO	Do
151.280	IB,PO	Do
151.295	IB,PO	Do
151.310	IB,PO	Do
151.325	IB,PO	Do
151.340	IB,PO	Do
151.355	IB,PO	Do
151.370	IB,PO	Do
151.385	IB,PO	Do
151.400	IB,PO	Do
151.415	IB,PO	Do
151.430	IB,PO	Do
151.445	IB,PO	Do
151.460	IB,PO	Do
151.475	IB,PO	Do
151.490	IB,PO,IS	IS use not permitted in PR/VI

* * * * *

152.270	LX	
152.285	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
152.300	LX,IB	Do
152.315	LX,IB	Do
152.330	LX	
152.345	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
152.360	LX,IB	Do
152.375	LX,IB	Do
152.390	LX	
152.405	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
152.420	LX,IB	Do
152.435	LX,IB	Do
152.450	LX	

* * * * *

157.530	LX	
157.545	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
157.560	LX,IB	Do
157.575	LX,IB	Do
157.590	LX	
157.605	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
157.620	LX,IB	Do
157.635	LX,IB	Do
157.650	LX	
157.665	LX,IB	IB outside, LX inside SMAs over 50,000 pop.
157.680	LX,IB	Do 1
57.695	LX,IB	Do
157.710	LX	

* * * * *

FOOTNOTES

[1] Petition for Rule Making, RM-6276, filed on February 2, 1988 by the National Association of Business and Educational Radio, Inc. (NABER). Errata filed March 22, 1988. NABER is the Commission's certified frequency coordinator for the Business Radio Service as well as the frequency coordinator for the Business pool of frequencies available at 800 MHz and above.

[2] Petition for Rule Making filed by the International Taxicab Association on April 20, 1988. Because the ITA petition runs counter to the NABER petition, we are incorporating the ITA petition into this docket and will consider both petitions concurrently.

[3] In the Matter of Amendment of the Rules in Parts 2, 89, 91, and 93 Concerning the Use of "Tertiary," or 15 kHz channels, in the 150-162 MHz band; Amendment of Part 89 to Designate Frequency 153.740 MHz as Available to the Local Government Radio Service. Report and Order, Docket No. 17703, 36 Fed. Reg. 12102 (1971), 22 RR 2d 1640 (1971).

[4] We adopted 10 and 7 mile separation requirements for stations operating on channels 15 kHz apart. *Id.* at 17704. *See also*, Section 90.173(f) of the Commission's Rules, 47 C.F.R. § 90.173(f).

[5] A Motion for Extension of Time to File Comments, filed by the International Taxicab Association (ITA) on March 10, 1988, was denied. *See* Order Denying Extension of Comment Period, RM- 6276, released on March 18, 1988, FCC Mimeo 2147.

[6] In the Matter of Amendment of Section 91.554(a) of Part 91 (Formerly Section 11.554(a) of Part 11), Subpart L, of the Commission's Rules Governing the Business Radio Service Whereby Certain "Tertiary" Channels in the 151-155 MHz Band Will Be Made Available on a Regular Basis. Order, Docket No. 13930, 34 FCC 2d 642 (1972).

[7] *See* Report and Order in PR Docket No. 83-737, 103 FCC 2d 1093 (1986) and Memorandum Opinion and Order, PR Docket No. 83-737, 51 Fed. Reg. 36013 (1986), 61 RR 2d 148 (1986).

[8] Report and Order at 1136.

[9] The 157 MHz channels are contained in the band 157.530 - 157.710 MHz.

[10] NABER Petition at 5.

[11] *Id.*

[12] *Id.* at 8.

[13] NABER Reply Comments at 12.

[14] ITA Petition at i.

[15] *Id.* Of the nine channel pairs (18 individual channels) that ITA discusses here, six channel pairs are the twelve channels that NABER seeks for the Business Radio Service in areas outside the defined SMAs.

[16] *Id.* at 6.

[17] *Id.* at 8.

[18] *Id.* at 14.

[19] The subject offset channels are: 150.830 MHz 150.860 150.890 150.920 150.950 151.010 151.040 151.070 151.100 151.130 151.160 151.190 151.220 151.250 151.280 151.310 151.340 151.370 151.400 151.430 151.460 151.490 The channels 150.830 MHz through 150.950 MHz are assigned in the continental U.S. to the Automobile Emergency Radio Service, 151.010 MHz through 151.130 MHz to the Highway Maintenance Radio Service, and 151.160 MHz through 151.490 MHz to the Forestry Conservation Radio Service.

[20] There is one exception to the adjacent channel situation. The frequency 151.490 MHz is 15 kHz adjacent on one side to a channel assigned to the Business Radio Service and 15 kHz adjacent to a channel assigned to the Special Industrial Radio Service. We will propose to provide 151.490 MHz to the Business Radio Service but seek comments on this situation.

[21] The four 150 MHz Business paging-only channels are: 152.480 MHz 350 watts output power 157.740 MHz 75 watts output power 154.625 MHz 20 watts output power 158.460 MHz 20 watts output power

[22] Message Center comments at 3.

[23] *Id.* at 5.

[24] Message Center also argues that there are two additional VHF channels (154.625 and 158.460 MHz) beyond what NABER identifies that can be used for high power paging. For support, Message Center refers to 47 C.F.R. § 90.75(c)(15). We note that this section was inadvertently amended in PR Docket No. 85-273. That proceeding concerned only UHF paging channels. We will editorially amend this section to reflect that 154.625 and 158.460 MHz are limited in power to 20 watts.

[25] ITA's Statement of Opposition at 11.

[26] *Id.*

[27] On June 27, 1988, NABER filed a Petition for Rule Making (Erratum filed on July 5, 1988) requesting that the Commission increase the permitted power to 350 watts on two of the 150 MHz paging channels channels. Because we now seek comments on the same proposal, we will incorporate this petition into this proceeding. This second petition will be placed in this docket file and comments are requested on its contents.

[28] NABER Petition at 6.

[29] ITA Statement of Opposition at 13.

[30] *Id.* at 14.

[31] Standard Metropolitan Areas of 50,000 or More Population, FCC No. 57166, released September 23, 1964.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition to Amend the Amateur Service Rules Concerning Change of Mailing Address and Deceased Licensees.

ORDER

Adopted: July 29, 1988 **Released: August 11, 1988**

By the Chief, Private Radio Bureau

1. On February 25, 1988, Robert McAtee filed a petition to amend the Amateur Radio Service Rules to add a provision that a letter signed by three Amateur Extra Class operator licensees stating that an amateur station licensee had changed his/her address, and providing the new address, would cause the Commission to change the license record for that licensee. The petitioner also requests that the Commission cancel an amateur service license upon receipt of a letter signed by three Amateur Extra Class operator licensees stating that an amateur operator within their zip code area had died.

2. The petitioner argues that the Commission's licensee data base lists many persons who are deceased or who have moved without reporting a change of mailing address. Consequently, when the petitioner uses the information in the data base for a mailing list, he incurs unnecessary expense because many of the letters end up in the dead letter office. He believes that his proposals would solve this problem.

3. The petitioner has focused on a problem that is inherent in the systematic keeping of records -- inaccuracy or non-currency of the data because of a failure by those responsible to advise the record keeper of changes. We do not concur, however, with the petitioner's solution, because of the potential for error and abuse. The responsibility for keeping a mailing address current must be on the person who is the recipient of the right or privilege conferred. In the case of a decedent, the duty of notification usually falls upon a close relative or the executor of the estate. In our view, to allow other persons to contact the Commission regarding mailing address changes or the licensee's death would result in numerous errors and sham notifications. Thus, it is unlikely that the accuracy of the data base would be improved and it could, in fact, be made more inaccurate if the proposed amendments were adopted. Accordingly, the instant petition for changes to our amateur service licensing procedures does not warrant action by the full Commission.

4. IT IS THEREFORE ORDERED, pursuant to the authority contained in Sections 0.331 and 1.401(e) of the Commission Rules, 47 C.F.R. §§ 0.331 and 1.401(e), that the petition IS DENIED. Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, review by the full Commission of this action, which is taken under delegated authority, may be requested.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IDB COMMUNICATIONS GROUP, INC. File Nos. CSG-88-009-P/L and CSG-88-010-P/L

Application for authority to construct and operate two international earth station facilities at Staten Island, New York, for provision of INTELSAT Business Services and television service

ORDER AND AUTHORIZATION

Adopted: July 29, 1988; Released: August 11, 1988

By the Chief, International Facilities Division:

1. The Commission is considering two applications, filed by IDB Communications Group, Inc. (IDB) on December 4, 1987, and amended by letters of January 22, March 17, June 1, and July 7, 1988, requesting authority, pursuant to Title III of the Communications Act of 1934, as amended, and Section 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962, as amended, to construct and operate two international earth stations at Staten Island, New York, for provision of INTELSAT Business Services (IBS) and television service. The applications were placed on public notice on December 16, 1987. No comments were received. The applicant has been granted blanket authority to establish and operate channels of communication between the U.S. and various international points for provision of IBS and related digital video services and television service.[1]

2. Both of the proposed facilities will utilize 15.2 meter antennas which conform with INTELSAT revised Standard A technical parameters and communicate with INTELSAT Atlantic Ocean Region (AOR) satellites in the 6/4 GHz band. The two facilities will be constructed at the New York Teleport, Staten Island, New York, and will be used to provide a full range of IBS and related digital video services and television service to international points.

3. In its Report and Order in the *Earth Station Ownership Proceeding* in CC Docket No. 82-540, the Commission modified its policy on the ownership and operation of U.S. international earth stations that access the INTELSAT system by permitting carriers, individually or jointly, to own and operate their own earth station facilities.[2] In that Order, the Commission distinguished between earth stations used to provide IBS and/or television service and multipurpose stations. It determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multipurpose stations. It also determined that the public interest requires that IBS be introduced in the United States as soon as possible. The Commission therefore concluded that it would consider only minimal legal, financial, and technical qualifications of the applicant as required by Section 308 and 319 of the Communications Act, when processing IBS and television service applications. The Commission further concluded that absent special problems, it would treat these applications as routine and expeditiously process them. [3] The Commission has granted many applications to construct and operate IBS earth stations based on this approach.[4]

4. IDB has the legal, technical, and financial qualifications to construct and operate the proposed earth stations. IDB is a common carrier pursuant to the Communications Act of 1934, as amended, and provides various international services. IDB has been authorized to construct and operate other IBS earth stations.[5] The proposed earth stations comply with INTELSAT revised Standard A technical parameters. IDB has completed the necessary frequency coordination.

5. The scope of operation of the proposed stations will be the same as that permitted by the Commission in previous IBS and television service authorizations. With respect to IBS, we will limit the authorization to the provision of IBS and those video services compatible with the stations' digital format operation.[6] To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television service category, we will not restrict operation of the proposed stations. However, IDB may not provide any service which falls outside the IBS/television service category. Any authorization to use the proposed stations as multipurpose earth stations would require a determination as to traffic and revenue diversion from existing multipurpose earth stations that may result.

6. Upon consideration of the applications, we find that authorization of requested services and facilities is in the public interest.

7. Accordingly, IT IS ORDERED, pursuant to Sections 304, 309 and 319 of the Communications Act of 1934, as amended, and Section 201(c) of the Communications Satellite Act of 1962, as amended, that applications File Nos. CSG-88-009-P/L and CSG-88-010-P/L ARE GRANTED, and IDB is authorized to construct and operate the two proposed earth stations at Staten Island, New York, to provide IBS and related digital video services and television service.[7] Before completion of equipment installation and facility activation, however, the applicant shall provide the Commission with a summary of equipment which was actually installed.

8. This order is issued under Section 0.291 of the Commission's Rules and Regulations and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* , IDB Communications Group, Inc., DA 86-412, released December 31, 1986, (File No. I-T-C-87-013).

[2] Earth Station Ownership, 100 FCC 2d 250 (1984).

[3] Upon grant of an IBS/television application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the use of the authorized facilities to the provision of IBS and/or television services, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[4] *See* cases cited in Satellite Gateway Communications, Inc., Mimeo No. 2696 (released March 4, 1986) and American Telephone and Telegraph Co., Mimeo No. 3327 (released March 25, 1986).

[5] *See* IDB Communications Group, Inc., DA 87-1412, released October 9, 1987, (File No. CSG-87-037-P/L).

[6] These video services are to be distinguished from the television service authorized herein.

[7] This authorization is not to be construed as permitting the provision of IBS or television service between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-376

In the Matter of

Amendment of Section 73.202(b),	RM-5839
Table of Allotments,	RM-6154
FM Broadcast Stations.	
(Dalton and Rockmart, Georgia)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 12, 1988; Released: August 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd. 5626 (1987), proposing to allot Channel 297A to Dalton, Georgia, as its first FM allotment, in response to a petition for rule making filed by Calvin R. Means (petitioner). Petitioner filed comments restating his interest in Channel 297A at Dalton. After the release of the *Notice*, Broadcast Investment Associates, Inc. (BIA) submitted a petition seeking the substitution of Channel 296C2 for Channel 296A at Rockmart, Georgia, and modification of its Class A license for Station WZOT(FM) to specify the new channel. We have treated that request as a counterproposal in this proceeding.[2] Petitioner and BIA filed reply comments in response to the counterproposal. [3]

2. In reply comments, BIA argues that it was not aware of the Dalton proposal for Channel 297A, when it filed to upgrade the facilities for Station WZOT(FM) on Channel 296C2.[4] It adds that to resolve the conflict between the mutually exclusive proposals, it conducted a frequency search which found alternate Channel 283A available for allotment to Dalton. BIA submitted engineering data for Channel 283A. In responsive comments Means stated, his support for the alternative allotment, and his intention to apply for Channel 283A at Dalton, Georgia, if allotted.

3. In view of the availability of an alternate Class A channel to Dalton, a comparative analysis is unnecessary. Thus, we believe that the public interest would be served by allotting Channel 283A to Dalton, Georgia, as a first FM service, and substituting Channel 296C2 for Channel 296A at Rockmart, Georgia, in order to provide expanded service to that area. Both allotments can be made in compliance with the minimum distance separation requirements. The transmitter for Channel 283A at Dalton is restricted to 6.6 kilometers (4.1 miles) east of the city to avoid short spacing to construction permit for Station WZYP(FM) Athens, Alabama, to upgrade to a full Class C facility on Channel 282. A site restriction 28 kilometers (17.4 miles) must be imposed on Channel 296C2 at Rockmart to meet the spacing requirements to Station WKXX(FM) Channel 295C, Birmingham, Alabama, and Station WCGQ(FM), Channel 297C, Columbus, Georgia.[5]

4. Because the proposed transmitter site for Station WZOT(FM) is located within 80 kilometers (with ERP of more than 25 KW) of the Federal Communications Commission's Monitoring Station at Powder Springs, Georgia, the licensee should be aware of the provisions of Section 73.1030(c) of the Rules governing protection of Federal Communications Monitoring Stations.

5. Channel 296C2 at Rockmart would be short spaced by approximately 2 kilometers, to two of the twelve pending applications for vacant Channel 298A at Roswell, Georgia (870727MA and 870727MM). These applicants have filed no objections to the proposed substitution. They will be served a copy of the *Order* and should amend their applications to reflect sites which do not conflict with the allotment. In accordance with Commission policy, the applicants will retain filing protection for their pending applications for Channel 298A, since the transmitter site will be relocated to resolve a new allotment short spacing of Channel 296C2 at Rockmart, Georgia. *See Manhattan and Ogden, Kansas*, 2 FCC Rcd. 5081 (1987).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

City	Channel No.
Dalton, Georgia	283A
Rockmart, Georgia	296C2

7. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WZOT(FM), Rockmart, Georgia, IS MODIFIED to specify operation on Channel 296C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. The window period for filing applications for Channel 283A at Dalton, Georgia, will open on **September 26, 1988,** and close on **October 26, 1988.**

9. IT IS FURTER ORDERED, That the Secretary, SHALL SEND a copy of the *Report and Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the applicants for Channel 298A at Roswell, Georgia, (as indicated in paragraph 3) as follows:

Georgia Public Telecommunications Commission
1540 Stewart Avenue
Atlanta, Georgia 30310

Roswell Broadcasters Communications, Ltd.
13901 Drexmore Rd.
Shaker Heights, Ohio 44120

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communityof Rockmart, Georgia, has been added to the caption.

[2] Public Notice of the Rockmart counterproposal was given on November 25, 1987, Report 1693.

[3] Additional comments of BIA filed after the comment period ended are unacceptable for consideration herein, pursuant to Section 1.420(d) of the Rules.

[4] A separation of 105 kilometers is required between 1st adjacent Class A and C2 channels. The distance between Dalton and Rockmart is only 85.5 kilometers

[5] Coordinates for Dalton at the restricted site are 34-46-51 and 84-53-30, and for Rockmart 34-14-17 and 84-59-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-258

In the Matter of

Amendment of Section 73.202(b), RM-5796
Table of Allotments,
FM Broadcast Stations.
(New London and Merrill, Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 8, 1988; Released: August 11, 1988

By the Deputy Chief, Policy and Rules Branch:

1. At the request of Goetz Communications Corporation (petitioner), licensee of Station WNBK(FM), Channel 228A, New London, Wisconsin, the Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 2 FCC Rcd 4381 (1987), proposing the substitution of Channel 228C2 for Channel 228A at New London, and modification of its license to specify operation on the higher class co-channel. In addition, Roberts Broadcasting, Inc. (Roberts), the licensee of Station WMZK(FM) at Merrill, Wisconsin, was ordered to show cause why its license should not be modified to specify operation on Channel 281A in lieu of Channel 228A, in order to accommodate the upgrade at New London. Petitioner filed supporting comments reaffirming an interest in pursuing the upgrade of its facilities. Roberts submitted late-filed opposition comments.[1] Petitioner filed reply comments.

2. Roberts contends that adopting the proposal will have a "significant and egregiously deleterious effect upon the established operations of Station WMZK(FM) and disserve the public interest." Roberts argues that *Columbus, Nebraska*, 59 RR 2d 1184 (1986), should apply here since confusion and disruptions to its station would result from the change in frequency and relocation to a higher point on the FM band. Roberts notes the similarity between its call sign and the call sign of Station WNBK. Roberts asserts that its future plans to modify its facilities will be prejudiced by the proposed frequency change and "audience dislocations" caused thereby. Furthermore, Roberts urges the denial of the proposal.

3. In reply comments, petitioner argues that Roberts' objections to the proposal are unsupported by facts and inconsistent with Commission precedent. Petitioner states that Roberts' objections should be "summarily dismissed for failure to raise even one proper objection." Petitioner urges the Commission to move forth on the proposal and grant its modification. Petitioner reaffirms its willingness to reimburse Roberts for reasonable costs of changing frequencies.

4. We find that the arguments raised by Roberts are insufficient to justify denial of petitioner's request. Roberts' reliance on our decision in *Columbus, Nebraska, supra*, is misplaced. In that case, we stated our concerns with respect to proposals involving multiple FM or Television channel substitutions. We noted a number of factors which weighed against ordering such substitutions. Specifically, we noted that, while channel substitutions of one or two stations generally can be successfully implemented, proposals for substitutions of a larger number of stations frequently cannot be effectuated due to significant coordination difficulties and expenses generated by such proposals. Accordingly, we announced a general policy that, barring compelling public interest reasons to the contrary, we would not entertain proposals involving more than two other changes to existing licenses. The petitioner's proposed upgrade involves only one other channel change, and, therefore, does not fall within the scope of the policy announced in *Columbus, Nebraska*. Roberts' concern that listeners might be confused by the similarity in call signs is similarly unavailing. Even if the Commission were to consider call sign confusion, the two stations are spaced sufficiently far apart so that their 1 mV/m contours do not overlap, and therefore call sign confusion within the service area of either station is highly unlikely to occur. Finally, we reject Roberts' future plans to upgrade its facilities as speculative. Roberts provided no specific information regarding its plans. In view of the foregoing, Roberts has not raised a substantial and material question of fact requiring a hearing on its license modification. *See Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

5. After carefully considering all the information submitted in response the *Notice*, we conclude that the public interest would benefit from the substitution of Channel 228C2 for Channel 228A at New London, as a first wide coverage area FM service to that community. The substitution can be made in compliance with the Commission's minimum spacing requirements with a site restriction of 17 kilometers (10.6 miles) northeast of the community.[2] The restriction is necessary to avoid short spacings to Station WZFM(FM), Channel 227B, Milwaukee, Wisconsin, and a vacant allotment, Channel 229A at Nekoosa, Wisconsin. In addition, the substitution of Channel 281A for Channel 228A must be made at Merrill. [3]

6. Concurrence from the Canadian government has been obtained, since Merrill is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

7. Commission policy requires that Station WMZK(FM) be reimbursed for the reasonable costs of changing frequencies from one Class A to another. *See Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee for its legitimate expenses in changing frequency.

8. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WNBK(FM) to specify operation on Channel 228C2.

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Merrill, Wisconsin	281A
New London, Wisconsin	228C2

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WNBK(FM), New London, Wisconsin IS MODIFIED, to specify operation on Channel 228C2 in lieu of Channel 228A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WMZK(FM), Merrill, Wisconsin IS MODIFIED, to specify operation on Channel 281A in lieu of Channel 228A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-5295 except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-5295 except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Report and Order*, to the licensee of Station WMZK(FM), as follows: Roberts Broadcasting, Inc., Route 2, Box 106, Lac-Du-Flambeau, WI 54538.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although Roberts failed to submit a motion for acceptance of its late-filed comments, we shall consider the one day late opposition herein. We find that since petitioner responded to the issues raised in the opposition, acceptance of the comments should not prejudice the outcome of the case. Furthermore, we believe the instant proposal requires thorough consideration of all the information filed herein before reaching our determination.

[2] The proposed site coordinates are 44-30-51 and 88-36-53.

[3] The licensed site coordinates are 45-10-45 and 89-38-20. Channel 281A can also be used at the coordinates specified (45-06-14 and 89-43-05) in an application to change the site of Station WMZK(FM), BPH-870225IG.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-302

In the Matter of

Amendment of Section 73.202(b), RM-5698
Table of Allotments,
FM Broadcast Stations.
(Palm Springs, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 6, 1988; Released: August 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 4718 (1987), issued herein in response to a petition filed on behalf of KPSI Radio Corporation, licensee of Station KPSI(FM), Channel 265A, Palm Springs, California, proposing the substitution of Channel 263B1 for Channel 265A and modification of its license accordingly. Petitioner filed comments in support of the proposal. Comments were also filed by Craig L. Fox[1] (Fox), to which the petitioner responded.

2. We believe the public interest would benefit by substituting Channel 263B1 for Channel 265A at Palm Springs, California, since it could provide the community with an additional expanded coverage area broadcast station. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KPSI(FM) to specify operation on Channel 263B1 in lieu of Channel 265A, as requested. A staff engineering analysis has determined that Channel 263B1 can be allotted to Palm Springs in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing the petitioner's specified transmitter site.[2] Additionally, since Palm Springs is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence to the proposal by the Mexican government was obtained.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Palm Springs, California	263B1,284B,291B

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of KPSI Radio Corporation for Station KPSI(FM), IS MODIFIED, effective **September 23, 1988,** to specify operation on Channel 263B1 in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Fox separately proposed the allotment of Channel 262A to Joshua Tree, California, and Channel 263A to La Quinta, California, both of which conflicted with the proposed substitution of Channel 263B1 for Channel 265A at Palm Springs. However, Fox subsequently amended his proposal to request consideration of Channel 221A rather than Channel 262A at Joshua Tree (see MM Docket No. 88-237). His request to allot Channel 263A to La Quinta was withdrawn and is hereby dismissed. Thus, no obstacle to consideration of the instant proposal remains.

[2] Reference coordinates at the petitioner's preferred site are 33-56-53 and 116-24-31.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-79

In the Matter of

Amendment of Section 73.202(b), RM-6058
Table of Allotments,
FM Broadcast Stations.
(Iuka, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 12, 1988; Released: August 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 3 FCC Rcd. 1081 (1988), issued in response to a request filed by Segars Communications, Inc. (petitioner), licensee of Station WTIB, Channel 285A, Iuka, Mississippi, proposing the substitution of FM Channel 285C2 for Channel 285A and modification of the license accordingly. Petitioner filed comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 285C2 for Channel 285A at Iuka, Mississippi, since it could provide the community with its first wide area coverage FM service. The channel can be allotted in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules provided there is a site restriction 8.8 kilometers (5.5 miles) northwest of Iuka.[1] The site restriction will prevent a conflict with Station WLAY-FM, Channel 288A, Muscle Shoals, Alabama.[2]

3. We have authorized a modification of petitioner's license for Station WTIB, Iuka, Mississippi, to specify operation on Channel 285C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Iuka, Mississippi	285C2

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WTIB, Iuka, Mississippi, IS MODIFIED to specify operation on Channel 285C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. The window period for filing applications will open on **September 26, 1988,** and close on **October 26, 1988.**

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice* indicated a site restriction 27 kilometers southwest of Iuka to prevent a conflict with Station WVRY, Channel 285A, Waverly, Tennessee and Station WLAY-FM, Channel 288A, Muscle Shoals, Alabama. The *Notice* further indicated that Station WVRY, Waverly, had filed a petition to upgrade its station to specify Channel 286C2 in MM Docket 86-325 and should that proposal be granted, the site restriction for Iuka could be reduced to 8.8 kilometers northwest. A *Report and Order* was adopted on January 14, 1988, in that proceeding with an effective date of March 28, 1988.

[2] The coordinates for Channel 285C2 at Iuka with an 8.8 kilometer site restriction are 34-50-17 and 88-16-56.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-50

In the Matter of

Amendment of Section 73.202(b), RM-6105
Table of Allotments,
FM Broadcast Stations.
(Ontonagon, Michigan)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 12, 1988; Released: August 11, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd. 969 (1988), issued in response to a petition filed by Ontonagon County Broadcasting Inc. (petitioner), proposing the substitution of FM Channel 266C2 for Channel 252A at Ontonagon, Michigan and modification of its license for Station WONT(FM), to specify operation on the new channel. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 266C2 for Channel 252A at Ontonagon, Michigan, since it could provide the community with its first wide coverage area FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the current site of Station WONT(FM).[1] Since Ontonagon, Michigan is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. In addition, we have authorized a modification of the petitioner's license for Station WONT(FM), Ontonagon, Michigan, to specify operation on Channel 266C2 in accordance with Section 1.420(g) of the Commission's Rules since no other expressions of interest have been received.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ontonagon, Michigan	266C2

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WONT(FM), Ontonagon, Michigan, IS MODIFIED to specify operation on Channel 266C2, in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. The window period for filing applications will open on **September 26, 1988,** and close on **October 26, 1988.**

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 266C2 at Ontonagon are 46-44-49 and 89-11-27.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Adopted: July 26, 1988; Released: August 11, 1988

Richard D. Parlow
Associate Administrator
Office of Spectrum Management
U.S. Department of Commerce
National Telecommunications and
Information Administration
Washington, D.C. 20230

Dear Mr. Parlow:

This refers to your request for Commission comments and concurrence for an Army operated low power, non-commercial, educational class of FM Broadcasting station at Fort Hood, Texas and Fort Irwin, California. In your letter dated February 23, 1988, you stated that *The Manual of Regulations and Procedures for Federal Radio Frequency Management*, Section 8.4.23, sets forth NTIA's regulations regarding frequency assignments to Government broadcast stations. You conceded that the proposals here fail to meet the criterion established in Part I (G.2) of this section: Government low power educational FM stations in the conterminous United States will be limited to Government educational institutions offering curriculums similar to those of private or state supported colleges and universities.

You have proposed to waive the "similar curriculums" requirement for the two proposed stations, but stated that they should be subject to the following additional constraints:

(1) that the local broadcasters in the two areas have no objections to the establishment of these stations;

(2) that these stations be limited to a maximum of 10 watts transmitter output power[1] and be designed to cover only the military bases to be served;

(3) that these stations be primarily for educational and informational purposes; and

(4) that the stations are to serve large installations in remote areas.

Further, you supported the information set forth below that was provided by the Army. Specifically, that the stations will be used for troop information and education for those persons located at these remote forts. The programming will be produced by the Army Broadcasting Service of the Department of the Army and program content will be related to education, current news and instructions, sporting and other events of particular interest to military personnel and their dependents. As an educator, the Army is the largest training institution in the United States. Five percent of the soldier population of the Army is assigned to Fort Hood where training is conducted daily. In addition to unit and team training in military sciences, individual education is pursued by over 17,000 Fort Hood soldiers and the Fort Hood educational center supports accredited institutional educational programs. At Fort Hood, over 300 individual courses are offered annually ranging from high school completion through graduate level.

As to Fort Irwin, it is located in the remote Mojave Desert and is the site of the National Training Center of the U.S. Army. Fort Irwin encompasses more than 642,000 acres of training and maneuver area and its primary mission is to provide tough, realistic combined arms training using live fire and opposing forces in realistic scenarios.

Efforts to provide informational coverage through commercial broadcast facilities have been unsuccessful. Further, in addition to the dissemination of troop information and education, operation of the proposed radio stations will provide continuing education through on-the-job experience to Army personnel in performing program content, studio operation, transmitter operation, maintenance and related management functions. This is important considering the fact that the Army operates fifty-one FM broadcast stations in Europe as permitted by various Status of Forces Agreements.

Based on the above considerations and constraints and on our understanding that the proposed stations are to render service similar to that provided by FCC licensed non-commercial educational FM stations operating pursuant to Subpart C of Part 73 of our Rules, the Commission concurs in the use of the following:

Fort Hood

Coordinates: NL 30 degrees 08' 30", WL 97 degrees 45' 50"

ERP: 40 watts

Frequency: 89.9 MHZ[2]

Antenna Height AGL: 32 feet (10 meters)

Antenna Height AMSL: 872 feet (266 meters)

HAAT: assumed 30 meters for contour analysis; directionalized antenna[3]

Fort Irwin [4]

Coordinates: NL 35 degrees 15' 42", WL 116 degrees 41' 18"

ERP: 50 watts

Frequency: 88.5 MHz[5]

Antenna Height AGL: 50 feet (15 meters)

Antenna Height AMSL: 2565 feet (782 meters)

HAAT: -328 feet (-100 meters)

The facilities are subject to the following additional conditions:

a) An FCC type accepted transmitter will be used (bandwidth/emission designation, 256F9);

b) Programs will contain no commercial advertising;

c) Operation of the stations will be discontinued immediately upon notification by the Commission that interference is being caused to any non-Government radio station; and

d) The Commission's concurrence is subject to reconsideration at any time if, in the opinion of the Commission, the continued operation of these mili-

tary broadcasting stations appears to impede the orderly development of private broadcasting or otherwise contravenes the public interest.[6]

BY DIRECTION OF THE COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Although NTIA has set this limit on transmitter output power, we have provided for the upper limit on effective radiated power so that the user can set the combination of transmitter output power and antenna.

[2] Operation on 91.9 MHz as alternatively proposed is unacceptable due to severe short-spacing to a new commercial allotment to Killeen, Texas on channel 222A.

[3] It should be noted that coordination with Station KCEN-TV is needed since interference may occur. A detailed TV-6 study was not done pursuant to Section 73.525 of the Commission's Rules since the appropriate data was not submitted with the proposal. Further, if the HAAT is greater than 30 meters it will be necessary for us to perform additional studies.

[4] Pursuant to your request KNTC has been designated the call sign for the Fort Irwin station. KIFH has been designated the call sign for the Fort Hood station.

[5] With respect to the alternative proposed for operation on 89.5 MHz, using our contour overlap rules, the proposed station would receive objectionable interference.

[6] For example, these stations will not be protected and will not be allowed to cause interference to or preclude the addition or expansion of noncommercial educational stations.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-313

In the Matter of

Policy and Rules Concerning
Rates for Dominant Carriers

ORDER

Adopted: July 21, 1988; Released: July 22, 1988

By the Chief, Common Carrier Bureau:

1. On July 13, 1988, the Michigan Public Service Commission staff (Michigan Commission) and the Missouri Public Service Commission (Missouri Commission) filed motions requesting extensions of the pleading cycle established in the Further Notice in the above-captioned proceeding.[1] At present, comments are due on July 26, 1988, and reply comments on August 26, 1988. The Michigan Commission requests that we extend the time for filing comments by 30 days at least, and preferably by 120 days. The Missouri Commission requests that we extend the time for filing comments by 30 days.

2. The Michigan Commission states that it supports the March 3, 1988 resolution of the National Association of Regulatory Utility Commissioners (NARUC) that parties should be given a 180 day period to file comments and a 90 day period to file reply comments. The Michigan Commission asserts that the regulatory issues raised by the Further Notice require more than 60 days to accumulate data, formulate positions based on this data, and then file comments, and more than 30 days to digest the comments and file reply comments. In addition, the Michigan Commission states that it has a limited telecommunications staff.

3. The Missouri Commission references a motion for extension of time filed by NARUC,[2] and states that the current pleading cycle does not give parties adequate opportunity to digest and analyze the Further Notice, and to develop positions and present them coherently, in a way that will assist the Commission in reaching a decision. The Missouri Commission asserts that the individual states would be greatly benefited in developing their comments if the pleading cycle were extended until after the NARUC summer meetings, which end July 28, 1988.

4. It is the policy of the Commission that extensions of time shall not be routinely granted. [3] As we have previously stated, we think it particularly important that the issues raised in this proceeding be resolved expeditiously as the potential for significant increases in consumer welfare is great.[4] We believe that the current pleading cycle permits parties sufficient time to prepare comments and reply comments based on a considered analysis of the record, and we therefore deny the motions for extension of time filed by the Missouri Commission and the Michigan Commission.

5. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, 47 U.S.C. §§ 154(j), 155(c), and the authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the motions of the Michigan Public Service Commission Staff and the Missouri Public Service Commission described in paragraph 1 above, ARE DENIED. Comments in this proceeding are due on or before July 26, 1988, and reply comments are due on or before August 26, 1988.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Further Notice of Proposed Rule Making, FCC 88-172 (released May 23, 1988).

[2] NARUC filed a motion for an extension of time on July 1, 1988, and that motion was denied on July 14, 1988. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order, DA 88-1085 (released July 14, 1988) (hereinafter *NARUC Order*). Although we denied NARUC's motion, we said that NARUC's circumstances were unique, and that we would therefore expect to look favorably on a motion by NARUC to accept late-filed comments. It does not appear that such unique circumstances underlie the motions of either the Michigan Commission or the Missouri Commission.

[3] Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).

[4] *NARUC Order*, at para. 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 78-72
CC Docket No. 80-286

In the Matter of

MTS and WATS Market Structure

Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board

ERRATUM

Released: August 1, 1988

On July 8, 1988, the Commission adopted a Memorandum Opinion and Order on Reconsideration and Order Inviting Comments in this proceeding, FCC 88-228, released July 12, 1988. An Erratum indicating the effective date of the Rule modifications (DA 88-1110) was subsequently released on July 18, 1988. However, as a result of problems encountered with the publication of the Memorandum Opinion and Order on Reconsideration and Order Inviting Comments in the Federal Register, the effective date of those Rule modifications contained in Appendix B that did not have an effective date attached to the Rule is corrected to read **August 29, 1988.** In addition, the comment and reply comment dates set forth in paragraph 74 of the original Order Inviting Comments are corrected to read **August 29, 1988** and **September 28, 1988,** respectively. Accordingly, Paragraphs 72 and 74 should be corrected to read:

72. IT IS FURTHER ORDERED, that the rule modifications contained in Appendix B are ADOPTED, effective August 29, 1988.

* * * *

74. IT IS FURTHER ORDERED, pursuant to the procedures set forth in Section 1.415 of our Rules, that all interested parties may file comments no later than August 29, 1988, relating to how long we should continue bifurcated carrier common line charges prior to returning to equalized charges. Replies are to be filed no later than September 28, 1988. In accordance with the provisions of Section 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. All such filings will be available for public inspection in the Dockets Reference Room at the Commission's Washington, D.C. offices.

This Erratum will also correct the designation of Rule subsections inadvertently mislabeled in Appendix B of the Memorandum Opinion and Order. Appendix B, Paragraph 2, Subsection (hh) should be labeled Subsection (t); Subsection (ii) should be labeled Subsection (u); Subsection (jj) should be labeled (v); and Subsection (kk) should be labeled Subsection (w).

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

Midyear 1986 Access Tariff Filings

Petitions for Waiver

AMERITECH OPERATING COMPANIES

BELLSOUTH TELEPHONE COMPANIES

PACIFIC BELL

MEMORANDUM OPINION AND ORDER

Adopted: July 28, 1988; Released: July 29, 1988

By the Deputy Chief, Common Carrier Bureau:

1. The Ameritech Operating Companies (Ameritech), Pacific Bell (PacBell), and the BellSouth Telephone Companies (BellSouth) (collectively petitioners) filed petitions for waiver[1] of that portion of the Commission's Order, Midyear 1986 Access Tariff Filings, 1 FCC Rcd 1247 (1986) (*December 19 Order)* directing the local exchange carriers (LECs) to provide originating WATS access lines (WALs) with Feature Group A (FGA) and Feature Group B (FGB) service. The petitioners, as well as the GTE Operating Companies, were granted a waiver of this requirement on July 24, 1987, which is due to expire on August 1, 1988.[2] These waiver requests are similar to the carriers' previous requests, and are unopposed. For the reasons set forth below, we will grant the petitioners an additional one-year waiver.

2. In the *December 19 Orde* r, the Commission determined that [c]arriers may not refuse to provide WATS access lines in connection with FGA and FGB services." *Id.* at 1250. In January 1987, Ameritech filed a petition for clarification of the Order. In its petition, Ameritech argued that requiring the provision of originating WALs in connection with FGA and FGB was unnecessary because any interexchange carrier (IC) wishing to provide WATS service to customers served by nonconforming offices can use WATS access line extensions (WALEs) to connect those customers to offices with equal access capability. Moreover, Ameritech stated, the charge for those extensions is waived whenever WALEs would be required by an IC but not by AT&T. The Bureau denied the petition for clarification but granted a waiver until August 1, 1987, of the obligation to provide originating WATS access in connection with FGA and FGB.[3]

3. Soon thereafter, Ameritech filed a request for an indefinite continuation of that waiver based on the asserted high cost of compliance and the lack of IC demand for the service. MCI opposed the petition, stating that it had a need for originating WATS access in connection with FGB in order for its customers to access credit card and operator services. In response, Ameritech withdrew its request as it pertained to originating WATS access in connection with FGB and stated that it was prepared to bill correctly for that service by August 1, 1987.

4. While the Bureau was encouraged by Ameritech's quick response to MCI's service request, we declined to grant its request for an indefinite waiver. The Bureau stated that we believed that grant of such a waiver would be inconsistent with the service requirements established in the Commission's *December 19 Order*, 1 FCC Rcd at 1250, and that "[a] permanant waiver would not be appropriate in these circumstances because such a waiver would in fact rescind a Commission order."[4]

5. Ameritech again seeks to have this waiver extended indefinitely. PacBell requests a one-year extension of the waiver, while BellSouth requests an extension until January 1, 1991.[5] The petitioners explain that the costs of implementing the Commission's *December 19 Order* outweigh the benefits of compliance. Ameritech Petition at 4; PacBell Petition at 3; BellSouth Petition at 2. According to the petitioners, they would have to make major modifications to their billing systems in order to provide originating WALEs in connection with FGA. In particular, they state that they would have to make extensive changes to their Customer Record Information Systems and Carrier Access Billing Systems. In addition to billing problems, BellSouth claims that it would have to make substantial and costly modifications to its switches in order to comply with the Commission's *December 19 Order*. BellSouth Petition at 4. Ameritech also states that there continues to be no demand for this service, concluding that if it is required to offer a service that no IC orders, its customers must bear the costs of the service because it will not generate any revenues to cover them. Ameritech Petition at 3-5.[6]

6. Moreover, the petitioners reason that ICs want to be able to offer OutWATS service to customers in nonconforming offices in a way that permits them to compete with AT&T. Therefore, they agree to continue offering ICs the use of WALEs to connect those customers to offices with equal access capability; if a WALE would be required by an IC but not AT&T, the charge is waived. Ameritech Petition at 5; PacBell Petition at 4; BellSouth Petition at 5-6.

7. These waiver requests are similar to those filed by Ameritech, PacBell, and BellSouth in 1987. As there continues to be no demand for the service at issue and the costs of providing the service are not insignificant, we conclude that a one-year extension of these carriers' waivers is warranted. We also conclude that, as the Bureau stated in our prior Order granting Ameritech's second waiver request, an indefinite waiver would defeat the purpose of the Commission's *December 19 Order*. Until such time as that Order is modified to eliminate this service requirement, an indefinite waiver cannot be granted. Nor do we believe it is appropriate at this time to grant a waiver extension for more than one year. Any carrier needing additional time to comply with the *December 19 Order* may request an extension of its waiver prior to August 1, 1989.

8. Accordingly, IT IS ORDERED that the petition for indefinite waiver filed by the Ameritech Operating Companies IS GRANTED to the extent indicated herein and otherwise IS DENIED.

9. IT IS FURTHER ORDERED that the petition for waiver filed by the BellSouth Telephone Companies IS GRANTED to the extent indicated herein and otherwise IS DENIED.

10. IT IS FURTHER ORDERED that the petition for an extension of waiver filed by Pacific Bell IS GRANTED.

11. IS IS FURTHER ORDERED that the waiver granted by this Order expires on August 1, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief
Common Carrier Bureau

FOOTNOTES

[1] Ameritech Petition for Indefinite Waiver, filed July 1, 1988 (Ameritech Petition); BellSouth Petition for Waiver, filed July 12, 1988 (BellSouth Petition); PacBell Petition for Extension of Waiver, filed July 25, 1988 (PacBell Petition).

[2] Ameritech Tariff F.C.C. No. 2, Petitions for Indefinite Waiver, 2 FCC Rcd 4544 (1987) (*Ameritech Order*).

[3] Midyear 1986 Access Tariff Filings, Ameritech Petition for Clarification of December 19 Order, Ameritech Services Tariff F.C.C. No. 2, Mimeo No. 1955, released Feb. 17, 1987.

[4] *Ameritech Order*, 2 FCC Rcd at 4545. Although other LECs filed for and were granted waivers, only Ameritech's arguments were addressed in the Order. One of those LECs, the GTE Operating Companies, has not sought another waiver.

[5] BellSouth explains in its petition that it would accept a waiver for at least until December 1989, which is the earliest it could make the necessary billing and technical modifications to comply with the Commission's *December 19 Order*. However, it prefers a waiver until January 1, 1991, when it anticipates that WALEs will no longer be necessary because equal access will be available throughout its service area. BellSouth Petition at 7-9.

[6] Ameritech claims that the situation is different on the terminating side, as there is demand for terminating WATS traffic using FGA. According to Ameritech, the ICs believe it is advantageous to use FGA to terminate traffic in LATAs that are not completely converted to equal access. Ameritech Petition at 4.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-73

In the Matter of

Amendment of Section 73.202(b),	RM-4961, RM-5411,
Table of Allotments,	RM-5286, RM-5421,
FM Broadcast Stations.	RM-5291, RM-5488,
(Benton, Clarksville, Dardanelle,	RM-5314, RM-5508,
El Dorado, Hampton, Harrison,	RM-5339, RM-5615,
Huntsville, Mena, Ozark and	RM-5381, RM-5985,
Sherwood, Arkansas; Homer,	RM-5984, RM-5983,
Louisiana;	
Sallisaw and Vinita,	RM-5986, RM-5981
Oklahoma; Hooks	
and Kilgore, Texas)[1]	RM-5980, RM-5982

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 26, 1988; Released: August 4, 1988

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* in this proceeding, 2 FCC Rcd 1963 (1987), setting forth eleven mutually exclusive petitions for rule making. Three of these petitions request new allotments and eight petitions request upgrades of existing allotments. All parties filed comments supporting their respective proposals. In addition, counterproposals were filed by DLB Broadcasting Corporation, Demaree Media, Inc., Harrison Radio Station, Inc., Bridges Broadcasting Service, Lovelle Morris Beasley, Central Arkansas Broadcasting, Inc., Ozark Communications, Inc., James A. Reeder, Lowery Broadcasting Company, and J. L. Richardson.[2] Reply comments were filed by Southern Arkansas Radio Company, Demaree Media, Inc., Harrison Radio Station, Inc., Edward Rauscher Partridge, Bridges Broadcasting Service, Noalmark Broadcasting Corporation, Texarkana Broadcasting, Inc., Lovelle Morris Beasley, DLB Broadcasting Corporation, KIXK, Inc., and James A. Reeder.[3]

2. In the *Notice of Proposed Rule Making* we stated that conflicting proposals would be comparatively considered under the guidelines set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). We also restated our policy that a modification of license to upgrade facilities to a superior channel does not provide as great a public benefit as that of a new primary service. *Cf. Andalusia, Alabama*, 49 Fed. Reg. 32201, published August 13, 1984. Therefore, proponents for an upgrade in channel in conflict with a proposal for a new allotment were advised that they should demonstrate a preference under the allocation criteria by providing a showing of need for the proposed increase in existing service. This could take the form of a comparison indicating which new areas are to be covered and the extent to which these areas are currently unserved or underserved. In the absence of such a showing of need for the proposed increase in service, a conflicting new allotment would be favored since it represents a new service.

3. After careful consideration of this entire proceeding, we are upgrading the FM facilities of Station KITO, Vinita, Oklahoma, Station KKID, Sallisaw, Oklahoma, Station KKTX, Kilgore, Texas, Station KIXK, El Dorado, Arkansas, Station KAKI, Benton, Arkansas, and Station KCWD, Harrison, Arkansas. In addition, we will allot new FM channels to Mena, Arkansas, Clarksville, Arkansas, Sherwood, Arkansas, and Homer, Louisiana. In taking these actions, it is necessary to deny proposals for upgrades to Station KLLI, Hooks, Texas, Station KDYN-FM, Ozark, Arkansas, Station KWKK, Dardanelle, Arkansas, Station KKOL, Hampton, Arkansas, and Station KLBQ, El Dorado, Arkansas. We discuss the reasons for these actions below.[4]

Homer, Louisiana and Hampton, Arkansas

4. Homer Broadcasting filed a petition for rule making proposing the allotment of Channel 294C2 to Homer, Louisiana, as a second FM channel (RM-5286). This proposal is in conflict with the petition for rule making filed by Southern Arkansas Radio Company ("Southern Arkansas"), licensee of Station KKOL, Channel 296A, Hampton, Arkansas (RM-5615). Southern Arkansas proposes the substitution of Channel 295C2 in lieu of Channel 296A and modification of the Station KKOL license to specify operation on Channel 295C2.[5]

5. Southern Arkansas did not address the issue pertaining to the area that would receive service by its proposed upgrade at Hampton. Therefore, consistent with the policy set forth in *Andalusia, Alabama, supra*, we will allot Channel 294C2 to Homer, Louisiana as a new local service and deny the proposed upgrade at Hampton, Arkansas. In regard to related proposals in this proceeding, our denial of the proposed Hampton upgrade affects the proposed upgrades at El Dorado, Arkansas (RM-5381) and Benton, Arkansas (RM-4961). Specifically, it removes one of two conflicts with the El Dorado proposal and one of three conflicts with the Benton proposal.

Vinita and Sallisaw, Oklahoma ; Huntsville, Arkansas

6. DLB Broadcasting Corporation ("DLB Broadcasting"), licensee of FM Station KITO, Channel 240A, Vinita, Oklahoma, filed a petition for rule making proposing the substitution of Channel 241C2 in lieu of Channel 240A at Vinita and the modification of the Station KITO license to specify operation on Channel 241C2 (RM-5291). This upgrade proposal conflicts with a petition for rule making filed by Demaree Media, Inc. (Demaree), licensee of Station KKID-FM, Channel 240A, Sallisaw, Oklahoma. Demaree proposes the substitution of Channel 241C2 in lieu of Channel 240A at Sallisaw and modification of its Station KKID-FM license to specify operation on Channel 241C2 (RM-5508). In turn, the proposed upgrade at Sallisaw conflicts with a petition for rule making by Douglas S. Harlan proposing the allotment of Channel 242C1 to Mena, Arkansas, as that community's second local FM service (RM-5339). In addition, the Sallisaw upgrade conflicts with a counterproposal by Ozark Communications, Inc., licensee of Station KDYN-FM, Channel 244A, Ozark, Arkansas, proposing the substitution of Channel 242C2 in

lieu of Channel 244A and modification of the Station KDYN-FM license to specify operation on Channel 242C2 (RM-5980).

7. In response to these conflicts, DLB Broadcasting and Demaree submitted counterproposals. Both of these counterproposals propose Channel 240C2 at Sallisaw instead of the originally proposed Channel 241C2. In order to accommodate a Channel 240C2 allotment at Sallisaw, it is necessary to substitute the channel of Station KRRA, Channel 240A, Huntsville, Arkansas. To this end, Lovelle Morris Beasley, licensee of Station KRRA, filed supporting comments and a counterproposal proposing the substitution of Channel 225A in lieu of Channel 240A at Huntsville and the modification of the Station KRRA license to specify operation on Channel 225A (RM-5985).

8. We will grant the counterproposal for Huntsville, Arkansas.[6] Since the substitution of Channel 225A for 240A involves equivalent channels at Huntsville, we will modify the Station KRRA license to specify operation on Channel 225A in this rule making proceeding.[7] This will permit us to grant an upgrade at Sallisaw on Channel 240C2. Therefore, we will substitute Channel 240C2 in lieu of Channel 240A at Sallisaw, Oklahoma, and modify the Station KKID license to specify operation on Channel 240C2.[8] In turn, a Channel 240C2 allotment at Sallisaw removes the Sallisaw conflict with the proposals at Ozark, Arkansas, Mena, Arkansas and Vinita, Oklahoma. Unlike the proposals at Ozark and Mena, there are no other conflicts with the proposed upgrade at Vinita. Accordingly, we will substitute Channel 241C2 in lieu of Channel 240A at Vinita and modify the Station KITO license to specify operation on Channel 241C2.[9]

Harrison, Arkansas

9. Harrison Radio Station, Inc. ("Harrison Radio"), licensee of Station KCWD, Channel 240A, Harrison, Arkansas filed a petition for rule making proposing the substitution of Channel 242C2 in lieu of Channel 240A at Harrison and modification of the Station KCWD license to specify operation on Channel 242C2 (RM-5411). This conflicted with the petition for rule making to allot Channel 242C1 to Mena, Arkansas as well as the counterproposals for the Channel 242C2 upgrade at Ozark, Arkansas and the allotment of Channel 242A to Clarksville, Arkansas. In this regard, Demaree, in its counterproposal, proposes the substitution of Channel 241C2 at Harrison instead of the originally proposed Channel 242C2 (RM-5982).[10] The allotment would require a site restriction of 18 kilometers (11.2 miles) south. A Channel 241C2 allotment at Harrison removes the conflicts with the proposals at Mena and Clarksville, Arkansas. Moreover, for the reasons discussed in paragraph 10, *infra*, the proposed upgrade at Ozark, Arkansas will be denied due an un resolvable conflict with the proposed new service for Mena, Arkansas. In view of the fact that there is no valid proposal in conflict with proposed Harrison allotment, we will substitute Channel 241C2 in lieu of Channel 244A at Harrison and modify the license of Station KCWD to specify operation on Channel 241C2.[11]

Ozark and Mena, Arkansas ; Hooks and Kilgore, Texas

10. Ozark Communications, Inc., licensee of Station KDYN-FM, Channel 244A, Ozark, Arkansas, filed a counterproposal proposing the substitution of Channel 242C2 in lieu of Channel 244A at Ozark and modification of the Station KDYN-FM license to specify operation on Channel 242C2. The proposal conflicts with the proposed upgrade at Harrison, Arkansas, as well as the proposal to allot Channel 242C1 to Mena, Arkansas. The Mena proposal, in turn, is in conflict with the petition for rule making filed by Texarkana Broadcasting, Inc., licensee of FM Station KLLI, Channel 240A, Hooks, Texas, proposing the substitution of Channel 241C2 in lieu of Channel 240A at Hooks and the modification of the Station KLLI license to specify operation on Channel 241C2 (RM-5314). In turn, this Hooks proposal conflicts with a petition for rule making filed by Noalmark Broadcasting Corporation, licensee of FM Station KKTX, Channel 240A, Kilgore, Texas, proposing the substitution of Channel 241C2 in lieu of Channel 240A at Kilgore and modification of the Station KKTX license to specify operation on Channel 241C2 (RM-5421).

11. It is possible to grant only two of these four proposals. For the reasons discussed in paragraph 2, Channel 242C1 to Mena, Arkansas[12] is preferred as a new local service.[13] Therefore, the proposed upgrade at Hooks is denied. The denial of the Hooks proposal enables us to grant the upgrade at Kilgore, Texas to Channel 241C2 and modify the license of Station KKTX to specify operation on Channel 241C2.[14] We are also denying the proposed upgrade at Ozark, Arkansas due to the conflict with the proposed new allotment at Mena, Arkansas.

Dardanelle Sherwood, Clarksville and Benton, Arkansas

12. Central Arkansas Broadcasting Company, Inc. (Central), licensee of Station KWKK, Channel 272A, Dardanelle, Arkansas, filed a counterproposal in this proceeding proposing the substitution of Channel 294C1 in lieu of Channel 272A at Dardanelle and modification of the Station KWKK license to specify operation on Channel 294C1 (RM-5986). This conflicts with the petition for rule making filed by Bridges Broadcasting Service (Bridges), licensee of Station KAKI, Channel 296A, Benton, Arkansas proposing the substitution of Channel 294C2 in lieu of Channel 296A at Benton and modification of the Station KAKI license to specify operation on Channel 294C2 (RM-4961). In addition, both the Dardanelle and Benton proposals conflict with the petition for rule making filed by Sherwood Broadcasting Corporation ("Sherwood Broadcasting") proposing the allotment of Channel 294A to Sherwood, Arkansas as a new local service (RM-5488).

13. In its comments, Bridges submitted a counterproposal modifying its original request at Benton from Channel 294C2 to Channel 299C2 and requesting that the proposed allotment a Sherwood be modified to specify Channel 266A instead of Channel 294A. According to Bridges, these modifications would permit upgrades at both Dardanelle and Benton as well as the allotment of a new channel to Sherwood.

14. The Channel 299C2 counterproposal for Benton is unacceptable due to a short-spacing with Station KEZA, Channel 300C, Fayetteville, Arkansas as well as a Channel 299A allotment at Wrightsville, Arkansas. A Channel 266A proposal for Sherwood would be in conflict with a proposed Channel 266A allotment to North Little Rock, Arkansas as a first local service (MM Docket No. 87-612). In regard to Sherwood, we have undertaken our own engineering analysis to find an alternative channel. This is consistent with the Commission practice of modifying and substituting alternate channels to resolve conflicting allotment proposals. *See e. g. Churubusco, Huntington, Roa-*

noke and South Whitley, Indiana, 2 FCC Rcd 6505 (1987). As a result of this study, we will allot Channel 271A to Sherwood, Arkansas.[15]

15. J. L. Richardson filed a counterproposal in this proceeding proposing the allotment of Channel 242A to Clarksville, Arkansas as a new local service (RM-5981).[16] This counterproposal conflicts with the petition for rule filed by Douglas S. Harlan proposing the allotment of Channel 242C1 to Mena, Arkansas as a second FM service, as well as the petition for rule making of Harrison Radio Station, Inc., proposing the substitution of Channel 242C2 in lieu of Channel 244A at Harrison, Arkansas. In this regard, we have again undertaken our own engineering analysis and have determined that Channel 263A with a 12.7-kilometer (7.9 miles) northwest site restriction can be allotted to Clarksville.[17] This Clarksville allotment removes the conflict with Mena, Arkansas, Harrison, Arkansas, and Dardanelle, Arkansas.

16. In this proceeding it is necessary to resolve the conflict between the conflicting proposals at Dardanelle and Benton. In doing so, it is necessary to compare the Class C1 upgrade at Dardanelle against the Class C2 upgrade at Benton. This will be done under priority 4, "other public interest matters," as discussed in *Revision of FM Assignment Policies and Procedures*, *supra*. After a careful evaluation of these proposals, we have determined that Benton would be the preferable allotment.[18]

17. In this connection, we concur with the engineering exhibit submitted by the proponent for the Dardanelle upgrade. Specifically, the proposed Benton upgrade will provide a new 1 mV/m service to approximately 419,438 persons. In contrast, the Dardanelle upgrade provides a new 1 mV/m service to approximately 117,489 persons. Under priority 4 in *Revision of FM Assignment Policies and Procedures*, *supra*, this population difference is determinative. In regard to the Benton proposal, we recognize that a minimum of five aural services are available to the 419,438 persons receiving the new service. By comparison, the upgrade at Dardanelle would provide a third aural service to 2,508 persons, a fourth aural service to 13, 742 persons, and a fifth aural service to 8,092 persons. The number of aural services available in a proposed service area is a factor that we might take into account in making a determination on competing proposals under priority 4. *See Revision of FM Assignment Policies and Procedures* at 92. However, in this situation, the significant difference in the respective populations which would receive new service would not warrant granting the upgrade at Dardanelle due to a fewer number of aural services available to some persons within the proposed gain area.

El Dorado, Arkansas

18. KIXK, Inc., licensee of Station KIXK, Channel 240A, El Dorado, Arkansas, filed a petition for rule making proposing the substitution of Channel 241C1 in lieu of Channel 240A at El Dorado and modification of the Station KIXK license to specify operation on Channel 241C1 (RM-5381). Originally, this proposal conflicted with the proposed upgrades at both Hooks, Texas and Hampton, Arkansas. However, as discussed in paragraphs 5 and 11 *supra*, the Hampton and Hooks proposals have been denied. In view of these denials, there is no longer a conflict with the proposed upgrade at El Dorado.

19. In regard to the El Dorado proposal, James A. Reeder (Reeder), licensee of Station KCOZ, Channel 261A, Shreveport, Louisiana, filed comments and reply comments in opposition to the El Dorado upgrade. In his comments, Reeder refers to his own counterproposal in MM Docket No. 84-231 (the "omnibus proceeding") proposing the substitution of Channel 259C1 in lieu of Channel 261A at Shreveport and modification of the Station KCOZ license to specify operation on Channel 259C1. In order to accommodate this substitution at Shreveport, it was necessary to also propose the substitution of Channel 239A in lieu of Channel 260A at Homer, Louisiana. The *First Report and Order* in MM Docket No. 84-231, 100 FCC 2d 1332 (1985), denied this upgrade request. Reeder has petitioned the U.S. Court of Appeals for review of the Commission action. *James A. Reeder v. FCC and USA*, Case No. 86-1045 (D.C. Cir. January 21, 1986). Inasmuch as the proposed Channel 239A substitution in Homer conflicts with the Channel 241C1 upgrade at El Dorado, the *Notice* in this proceeding specifically stated that any Channel 241C1 upgrade at El Dorado would be contingent on the outcome of the Reeder judicial appeal.

20. Reeder argues that the Channel 241C1 substitution at El Dorado should be denied or held in abeyance pending the outcome of the judicial appeal. In this connection, Reeder contends that even a contingent grant of the El Dorado upgrade proposal would be "premature, potentially meaningless, and could prejudice the final resolution" of the earlier Shreveport proceeding. In reply comments, Reeder offers a solution with respect to Homer, Louisiana which would permit its upgrade at Shreveport while also enabling us to upgrade the allotment at El Dorado without being contingent on the judicial appeal. Specifically, Reeder suggests that instead of allotting Channel 294C2 to Homer, Louisiana as a new local service, Channel 294C2 be substituted for existing Channel 260A.[19]

21. After careful consideration of the Reeder comments and reply comments, we will not hold the El Dorado proposal in abeyance pending the outcome of the judicial appeal.[20] Contrary to the assertion by Reeder, our procedure of making a conditional grant is not a "waste of the time and resources of both potential petitioners and the Commission." The conditional grant enables the Commission to close expeditiously a proceeding substituting a new channel and modifying an existing license. This procedure facilitates the efficient transaction of Commission business and conserves resources which would be expended in maintaining a rule making proceeding in pending status over a prolonged period of time. We also disagree with the assertion that our action could "prejudice the final resolution of the earlier proceeding" involving Station KCOZ. In the event that Reeder is successful at the Court of Appeals, returning the El Dorado upgrade proceeding to pending status would, in fact, be mandated by that Court action. Furthermore, this action is consistent with our procedure in similar cases. *See e. g. Falmouth, Kentucky*, 52 Fed. Reg. 7309, published March 19, 1987.

22. In a related vein, we will not go forward in this proceeding with the suggestion advanced by Reeder pertaining to the substitution of Channel 294C2 in lieu of Channel 260A at Homer. This is in essence an untimely counterproposal in this proceeding in that it was advanced in reply comments. *See* Section 1.420(d) of the Commission's Rules. Moreover, we would not be able to go forward with the upgrade at Shreveport in view of our action conditionally granting the Channel 259C2 upgrade at Atlanta, Texas. *See Atlanta, Texas*, 3 FCC Rcd 2180 (1988).

23. Lowery Broadcasting Company, former licensee of FM Station KLBQ, Channel 257A, El Dorado, Arkansas, filed a counterproposal in this proceeding proposing the substitution of Channel 258C2 in lieu of Channel 257A at El Dorado and modification of the Station KLBQ license to specify operation on Channel 258C2. This upgrade proposal requires the substitution of Channel 241A in lieu of Channel 258A at Ruston, Louisiana and Channel 230A in lieu of Channel 258A at Hamburg, Arkansas. Inasmuch as Channel 258A at Ruston and Hamburg were allotted in MM Docket No. 84-231 (the "omnibus proceeding), a substitution of these channels requires a showing of compelling need or Commission error. *See Memorandum Opinion and Order* 50 Fed. Reg. 47391, published November 18, 1985. In this connection, the *Memorandum Opinion and Order, supra*, specifically stated that an upgrade does not constitute a compelling need. Therefore, this counterproposal will be denied in this proceeding.

24. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 23, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to read as follows:

City	Channel No.
Benton, Arkansas	294C2
Clarksville, Arkansas	224A, 263A
El Dorado, Arkansas	227A, 241C1, 257A, 276A
Harrison, Arkansas	241C2, 275C
Huntsville, Arkansas	225A
Mena, Arkansas	242C1, 269A
Sherwood, Arkansas	271A
Homer, Louisiana	260A, 294C2
Sallisaw, Oklahoma	240C2
Vinita, Oklahoma	241C2
Kilgore, Texas	241C2

25. The window period for filing applications for the Channel 294C2 allotment at Homer, Louisiana, the Channel 242C1 allotment at Mena, Arkansas, and the Channel 263A allotment at Clarksville, Arkansas, will open on **September 26, 1988,** and close on **October 26, 1988.**

26. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KITO, Vinita, Oklahoma, IS MODIFIED to specify operation on Channel 241C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

27. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KKID, Sallisaw, Oklahoma, IS MODIFIED to specify operation on Channel 240C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

28. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KKTX, Kilgore, Texas, IS MODIFIED to specify operation on Channel 241C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

29. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KCWD, Harrison, Arkansas, IS MODIFIED to specify operation on Channel 241C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

30. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KAKI, Benton, Arkansas, IS MODIFIED to specify operation on Channel 294C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

31. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KIXK, El Dorado, Arkansas, IS MODIFIED to specify operation on Channel 241C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

(d) This modification is expressly conditioned on the outcome of the appeal, *James Reeder v. FCC and USA*, Case No. 86-1045.

32. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KRRA, Huntsville, Arkansas, IS MODIFIED to specify operation on Channel 225A, subject to the following conditions:

(a) Nothing contained herein shall be construed to authorize any change in BLH 861002KB except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rule, PROVIDED the transmission facilities comply in all respects with License BLH 861002KB except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

33. IT IS FURTHER ORDERED, That the petition for rule making filed by Texarkana Broadcasting, Inc. for Channel 241C2 at Hooks, Texas (RM-5421) IS DENIED.

34. IT IS FURTHER ORDERED, That the petition for rule making filed by Southern Arkansas Radio Company for Channel 295C2 at Hampton, Arkansas (RM-5286) IS DENIED.

35. IT IS FURTHER ORDERED, That the counterproposal filed by Central Arkansas Broadcasting Company, Inc. for Channel 294C1 at Dardanelle, Arkansas (RM-5986) IS DENIED.

36. IT IS FURTHER ORDERED, That the counterproposal filed by Ozark Communications, Inc. for Channel 242C2 at Ozark, Arkansas (RM-5980) IS DENIED.

37. IT IS FURTHER ORDERED, That the counterproposal filed by Lowery Broadcasting Company for Channel 258C2 at El Dorado, Arkansas, IS DENIED.

38. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

39. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Bradley P. Holmes
Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Huntsville, Ozark, Clarksville and Dardanelle, Arkansas have been added to the caption.

[2] Salvation Broadcasting of Texas filed a counterproposal for Channel 236C2 at Quitman, Texas. This counterproposal was subsequently withdrawn.

[3] Edward Rauscher Partridge, present licensee of Station KLBQ, El Dorado, Arkansas, has filed a Motion to Strike directed against the reply comments submitted by KIXK, Inc., licensee of Station KIXK, El Dorado, Arkansas. In his Motion to Strike, Partridge notes that the former licensee of Station KLBQ filed comments and a counterproposal in this proceeding and KIXK, Inc. did not serve the prior licensee or Partridge with a copy of its reply comments. In view of the fact that KIXK, Inc. failed to comply with Section 1.420(b) of the Rules, the Motion to Strike is hereby granted and the reply comments of KIXK, Inc. will not be considered in this proceeding.

[4] Central Arkansas Broadcasting, Inc. and DLB Broadcasting have filed motions to sever certain proposals from this proceeding. Inasmuch as this *Report and Order* disposes of all proposals in this proceeding, the motions are hereby dismissed as moot.

[5] In its comments, Southern Arkansas suggests that Channel 295C2 be allotted to Hampton with a site restriction "twelve to thirteen miles northeast." According to Southern Arkansas, this site restriction would eliminate the conflict with the Homer proposal as well as a proposed upgrade at El Dorado, Arkansas. However, our own engineering review of this matter indicates that such a site restriction would create a short-spacing with Station KDDA, Channel 296A, Dumas, Arkansas.

[6] Public Notice was given on July 2, 1987, Report No. 1666.

[7] The reference coordinates for Channel 225A at Huntsville, Arkansas are 36-04-47 and 93-37-11.

[8] The reference coordinates for the Channel 240C2 Sallisaw allotment are 35-24-39 and 94-41-13.

[9] The reference coordinates for the Channel 241C2 Vinita allotment are 36-34-59 and 95-01-35.

[10] Public Notice was given on July 2, 1987, Report No. 1666.

[11] The reference coordinates for the Channel 241C2 allotment at Harrison, Arkansas are 36-07-00 and 92-58-00.

[12] The reference coordinates for the Channel 242C1 allotment at Mena, Arkansas are 34-34-48 and 94-14-30.

[13] In addition, comments in this proceeding noted that the Mena allotment would provide a first aural service to 2,143 persons and a second aural service to 12,505 persons. In regard to the proposed upgrade at Hooks, Texarkana Broadcasting, Inc. claimed a first aural service to 3,955 persons and a second aural service to 4,820 persons. However, this showing is incomplete in that it neglected the impact of Station KTAL, Channel 251C, Texarkana, Texas and Station KOSY, Channel 273C1, Texarkana, Texas. Our own engineering analysis indicates that Station KOSY operating with maximum Class C1 facilities would provide service to the entire area claimed by Texarkana Broadcasting, Inc., as a first or second aural service. Therefore, the proposed Hooks upgrade would provide a second aural service to 3,955 persons. Therefore, under priorities (1) and (2) involving first and second aural service as discussed in *Revision of FM Assignment Policies and Procedures, supra*, the Mena proposal is the preferred allotment under this criteria as well, because it would provide first aural service.

[14] The reference coordinates for Channel 241C2 allotment at Kilgore, Texas are 32-24-25 and 94-50-57.

[15] This allotment is contingent upon Station KHOZ, Harrison, Arkansas receiving a license in accordance with BPH-860707MT. Therefore, the filing window dates for Channel 271A at Sherwood, Arkansas will be announced at a future date to follow the licensing of the modified facilities at Station KHOZ. The reference coordinates for the Channel 271A Sherwood allotment are 34-46-26 and 92-14-37.

[16] This petition was received on April 13, 1987 and is being considered as a counterproposal to the *Notice of Proposed Rule Making* in this proceeding which was released on April 3, 1987. Public Notice was given on July 2, 1987, Report No. 1666.

[17] The reference coordinates for the Channel 263A allotment to Clarksville, Arkansas are 35-33-05 and 93-33-50.

[18] The Channel 294C2 allotment at Benton, Arkansas, requires a site restriction 17.1 kilometers (10.6 miles) northeast. The reference coordinates are 34-42-05 and 92-30-06.

[19] The filing window for the Channel 260A allotment at Homer opened on November 25, 1987 and closed on January 7, 1988. No applications were received during the filing window.

[20] The Channel 241C2 allotment at El Dorado, Arkansas requires a site restriction 15.7 kilometers (9.7 miles) north. The reference coordinates are 33-20-18 and 92-36-20.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

CRICO TELECOMMUNICATIONS OF SAN JOSE — File No. 20666-CD-P/L-01-86

For authority to establish additional facilities in the Public Land Mobile Service for Station KMA 741 at Gilroy, Sausalito, San Bruno, Los Altos and San Jose, California

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 1988; Released: August 12, 1988

By the Chief, Mobile Services Division:

1. Mobile Radio System of San Jose (MRSJ) filed two separate FCC Form 401 applications for additional facilities for its Public Land Mobile Service Station KMA 741: one application for facilities on frequency 152.69 MHz at Gilroy, California and one application for facilities utilizing frequency 152.69 MHz at Sausalito, San Bruno, Los Altos and San Jose, California. The staff accepted both applications for filing and consolidated them under the single file number listed above. Pacific Bell (Pacific) filed a petition to dismiss or deny the foregoing application, to which MRSJ filed an opposition. Pacific submitted a reply to MRSJ's opposition. After MRSJ had submitted its opposition pleading, CRICO Telecommunications of San Jose (CRICO), a California limited partnership, acquired all the assets of MRSJ pursuant to an assignment application previously approved by the Commission. CRICO has amended the above-captioned application to substitute itself for MSRJ.

2. Pacific's petition claims that MSRJ's application was unacceptable for filing and should be dismissed as defective because MSRJ failed to demonstrate interference-free operation with respect to Pacific's Station KMA 612 at San Jose, California. Pacific acknowledges that two recent Commission licenses for Station KMA 612 did not include an authorization for the frequency 152.69 MHz. Nevertheless, Pacific asserts that frequency 152.69 MHz had been omitted inadvertently by the Commission's staff from the authorization for Station KMA 612 and that Pacific has twice attempted to correct this error.[1] In its opposition pleading, MRSJ states that it utilized the Commission's Staff Study List, as made available to the public from the National Technical Information Service (NTIS) of the United States Department of Commerce, when it conducted its search of the Commission's records to determine whether there were any 152.69 MHz facilities authorized within the mileage separations specified by Section 22.503 of the Commision's Rules for each of its five proposed base station sites. MRSJ alleges that its frequency search did not indicate that Pacific's Station KMA 612 was authorized for frequency 152.69 MHz. In addition, MRSJ notes that Pacific has admitted that the two most recent Commission licenses for Station KMA 612 did not include an authorization for frequency 152.69 MHz. Basically, MRSJ asserts that Pacific has failed to demonstrate in its petition that it is presently authorized for frequency 152.69 MHz at Station KMA 612. Therefore, MRSJ argues, Pacific's petition should be dismissed, or in the alternative, a hearing should be held to determine whether Pacific is authorized for frequency 152.69 MHz at Station KMA 612.

3. After having reviewed the pleadings filed herein and the Commission's records, there is no doubt that Pacific is presently authorized to operate on frequency 152.69 MHz at Station KMA 612 at San Jose, California. In this regard, the Commission's Staff Study List, which is provided to the public by NTIS, is made available as a matter of convenience to be used as an aid and a reference guide for parties who need to review a list of applications pending before the Commission. Nevertheless, "it was never intended that the Staff Study List would supplant the Commission's own files as the Commission's basis for determining mutual exclusivity." *See* paragraph 6 of *Charles Rotkin d/b/a Northeast Communications*, Mimeo 2711, released February 22, 1985. *A fortiori*, the Staff Study List does not supersede the Commission's own files as the basis for deciding whether an applicant's proposal will cause interference to an existing station such as Pacific's Station KMA 612. Therefore, MRSJ could not rely on the Staff Study List when it submitted its interference study for frequency 152.69 MHz. A thorough search of the Commission's file for Station KMA 612 would have revealed that Pacific has been authorized to operate on frequency 152.69 for at least seven years. For that matter, it appears that since MRSJ and Pacific were competitors in several land mobile services in the same region of California, MRSJ should have been aware that Pacific was operating on 152.69 MHz at San Jose.

4. The first license which failed to list 152.69 MHz as a frequency utilized by Station KMA 612 was issued in July 1983 in response to a request by Pacific dated December 28, 1982 for a modification to KMA 612 to add a 450 MHz facility. The foregoing request for modification did not seek deletion of the 152.69 MHz frequency, nor does any Commission record show that the Commission has ever acted to revoke Pacific's authority to operate Station KMA 612 on frequency 152.69 MHz at San Jose. In this regard, we observe that Sections 312(c) and 309(e) of the Communications Act of 1934, as amended, require the Commission to conduct a hearing and issue a written decision before revoking or failing to renew the license of an FCC licensee for misconduct. The station file for Station KMA 612 contains no evidence of any such FCC action concerning any portion of Pacific Bell's license for that station. The second station license which omitted 152.69 MHz was issued in response to Pacific's October 1983 request to correct the license issued in July 1983 to include frequency 152.69 MHz as an authorized frequency. The foregoing license continued the discrepancy, however, and Pacific filed a second discrepancy report in which it requested that frequency 152.69 MHz be listed as one of its authorized frequencies. Although the foregoing omissions of frequency 152.69 MHz might have been confusing to an applicant seeking to ascertain which frequencies were being utilized by Pacific at Station KMA 612, MRSJ

would have discovered that Pacific was authorized on frequency 152.69 MHz if MRSJ had thoroughly searched the Commission's records.

5. We take this opportunity to remind applicants that they must conduct a thorough search of Commission files when attempting to ascertain which frequencies are licensed to existing licensees. Applicants may not rely on a clerical error or omission in a Commission license as authority for the proposition that a licensee has lost its authorization for a particular frequency. Pacific was licensed on frequency 152.69 MHz at the time that MRSJ filed the above-captioned application and our engineering studies indicate that each of CRICO's proposed base stations would cause significant interference to Pacific's existing Station KMA 612. Moreover, the applicant herein has failed to provide engineering studies showing that any of its five requested locations could operate without causing interference to Station KMA 612, as required by Section 22.15(b)(2) of the Commission's Rules. In light of the foregoing, CRICO's application must be dismissed as unacceptable for filing pursuant to Secion 22.20 of the Commission's Rules.

6. Accordingly, IT IS ORDERED, that the application (File No. 20666- CD-P/L-01-86) filed by CRICO Telecommunications of San Jose IS DISMISSED as unacceptable for filing.

7. IT IS FURTHER ORDERED, that the petition to dismiss or deny filed by Pacific Bell IS GRANTED.

8. This order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] Counsel for MRSJ claims that, on the same day that Pacific filed its petition, Pacific's counsel informed him that the Commission's staff was about to issue a new license for Station KMA 612 to correct the alleged inadvertent omission by including frequency 152.69 MHz in the authorization. In this light, MRSJ filed a petition for emergency relief requesting that the Commission defer any Commission action with respect to correction or modification of Pacific's license pending full investigation of the facts in this case. MRSJ's petition for emergency relief has been rendered moot by our action herein.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Liability For Forfeiture of

PAGE AMERICA OF MARYLAND, INC. File No. 64400-86-60-ALN

Notice of Apparent Liability for Forfeiture, dated March 27, 1986, in the amount of1,000 for Station KPE377 in the Public Land Mobile Service.

ORDER ON FORFEITURE

Adopted July 26, 1988; Released: August 12, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On May 24, 1985, Page America of Maryland, Inc. (PAM) filed an application for a one-way facility to operate on frequency 152.24 MHz at Baltimore, Maryland (File No. 23235-CD-MP/L-1-85). Simultaneously, PAM filed a request for Special Temporary Authority (STA), which was granted on June 26, 1985, to operate that facility pending grant of its application. On September 12, 1985, PAM filed an application for a one-way facility to operate on frequency 152.24 MHz at Catonsville, Maryland (File No. 24677- CD-MP/L-1-85).

2. In its May 24, 1985 application, PAM stated that it had a frequency sharing agreement with American TeleServices, Inc. (ATS) for use of frequency 152.24 MHz in the Baltimore and Catonsville area. PAM repeated this statement in its September 12, 1985 application, although it appears that PAM had been informed in August 1985 by ATS that they would not agree to coordinate operations in the Baltimore area. On October 21, 1985, ATS filed a Petition to Deny and on November 5, 1985, PAM requested dismissal of both referenced applications.

3. On March 27, 1986, the Common Carrier Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (Notice) to PAM and on April 28, 1986, PAM filed a statement in response to the Notice requesting that the Bureau vacate its Notice in all respects, stating that it did not willfully or knowingly misrepresent any facts to the Commission. To support these arguments PAM relies on the fact that it acquired Station KPE377 from Radio Communications, Inc. (RCI) through a transfer of control approved in February, 1985 and, during a review of all facilities acquired as the result of that transfer of control, it noted that two applications filed by RCI had been granted but never placed in operation. PAM contacted the Commission and was advised that no covering license had ever been submitted for these applications[1] and that PAM should resubmit the applications along with a request for Special Temporary Authority (STA). In response to that advice, PAM filed the Baltimore application and the STA request referenced in para. 1, *supra*. PAM further states that since the original application had referred to the sharing agreement, and had not been petitioned, it had no reason to believe that such a sharing agreement did not exist. On June 20, 1986, PAM filed a supplement to its statement.[2]

4. PAM's statement also refers to a meeting in July 1985 between PAM personnel and representatives of ATS during which ATS informed PAM that the 1974 sharing agreement gave exclusive use of the referenced frequency to ATS in the Baltimore area. PAM further contends that, since they were not originally a party to the 1974 sharing agreement, they had to rely on information supplied by Boyd King, RCI's chief principal during the relevant time period. Therefore, PAM argues, subsequent to that meeting, in the belief that "any question of interpretation of the language or meaning of the 1974 agreement was a legal matter," PAM submitted its Catonsville application referenced in para. 1, *supra*.

5. In an effort to show that there is, indeed, a sharing agreement in place for the Baltimore area, PAM quotes the conditions attached to the license for Station KUO652 on frequency 152.24 MHz in Bethesda, Maryland and states that "[a]n identical condition was placed on the grants to American [ATS] for Station KUO650 at Baltimore and Towson . . . ." These conditions, argues PAM, would permit PAM to operate on the referenced frequency at Baltimore and Catonsville. Finally, PAM argues that when it discovered that ATS would not agree to frequency coordination it informed the Bureau and that it never implemented the STA granted by the Bureau.

6. Based upon PAM's explanation, we acknowledge that it is likely that PAM was acting in good faith when it filed its Baltimore application and STA request and that there was no intent to misrepresent any facts to the Commission. It is clear, however, that when PAM filed its Catonsville application it was aware that the existence of a frequency sharing agreement for the Baltimore area was, at best, questionable. By its own admission PAM had been informed by ATS of its refusal to coordinate on the referenced frequency two months prior to the date it filed the Catonsville application. Additionally, the conditions PAM alleges to be attached to the license for Station KUO650 are not, and have never been, attached to that station's license. To the contrary, the 1974 sharing agreement[3] specifically states that "American shall have exclusive use of the frequency 152.24 MHz for its one-way paging stations at Baltimore and Towson, Maryland for tone-plus- voice and/or tone-only service." Consequently, we find that PAM should have noted in its Catonsville application that there was a question regarding the sharing agreement. Instead, PAM included the same statement it had included in its Baltimore application and STA request, that it had a frequency sharing agreement with ATS for use of frequency 152.24 MHz in the Baltimore and Catonsville area.

7. We find that intentional misrepresentation did occur in the Catonsville application. In the Notice we stated, "The forfeiture of 1,000.00 was calculated by taking the forfeiture of 1,000.00 per occurrence and treating the apparent violations as one occurrence." In light of our finding of one instance of intentional misrepresentation, and in the absence of any mitigating circumstances, we will not forgive any portion of the forfeiture.

8. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(f)(4) of the Rules, IT IS ORDERED, that Page America of Maryland, Inc. FORFEIT to the United States

the sum of one thousand dollars (1,000) for the violation of Section 1.743(d) of the Commision's rules, as set forth above. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of the release of this order. If the said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Operations
Common Carrier Bureau

FOOTNOTES

[1] RCI's files indicated that there was a pending, but ungranted, covering license application filed on April 19, 1983.

[2] In its supplement PAM also argues that *Tel - Car of Hollywood, Inc.*, Mimeo No. 5098, released June 11, 1986, "dramatically brings into question the correctness of the Bureau's conclusions" in the Notice. We find, however, that the facts underlying these two cases are significantly different and that *Tel-Car* does not apply under these circumstances. In *Tel-Car* there was no dispute over the existence of a sharing agreement or the geographical area covered by the agreement. Additionally, the sharing agreement in place in *Tel - Car* did not specifically limit that agreement to facilities in place at the time of the agreement. In the instant proceeding, however, it is clear that the only sharing agreement on file with the Commission does not apply to the Baltimore/Towson area where PAM had proposed to offer service. (*See* para. 6, *infra)*

[3] The 1974 agreement was executed on January 28, 1974 by representatives of the predecessor in interest to ATS, American Radio Telephone Service (American), Advanced Communications Company, Inc. and RCI. The signatory for RCI was Boyd King. This agreement is a part of the Commission's station file for Station KUO650.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-191

In the Matter of

Amendment of Part 94 of
the rules regarding
point-to-multipoint use
of the 2.5, 10.6, and 18 GHz
bands by Private Operational
Fixed Microwave licensees

Amendment of Part 1 of the
rules concerning the general
procedures for filing an
application in the Private
Operational Fixed Microwave
Service

ORDER EXTENDING TIME FOR FILING REPLY COMMENTS

Adopted: July 28, 1988; Released: August 11, 1988

By the Chief, Private Radio Bureau:

1. On April 21, 1988, the Commission adopted a *Notice of Proposed Rule Making* (*Notice)* in the above-captioned matter (53 Fed. Reg. 23132 (1988)). Comments on the *Notice* were due July 18, 1988 and reply comments are due on or before August 2, 1988.

2. On July 22, 1988, The Community Telecommunications Network (CTN) filed a Motion to Accept Late-Filed Comments. In order to allow all interested parties to have the full fifteen days to respond to these comments, CTN requests a four day extension of the date for submitting reply comments. The Harris Corporation (Harris) also requested the Commission extend the time for filing reply comments. Harris contends that two weeks does not allow sufficient time for thoroughly analyzing the comments. It asks that the time for filing reply comments be extended to August 16, 1988.

3. It appears that the public interest would be served by granting an additional period in order to afford interested parties a full opportunity to respond to all the comments, including CTN's. Therefore, we will extend the reply comment deadline until August 16, 1988.

4. Accordingly, IT IS ORDERED, pursuant to the authority set forth in Section 0.331 of the Commission's Rules and Regulations, that interested parties have until August 16, 1988 to file reply comments in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-471

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Lynnville, Illinois) — RM-5920

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 6697 (1987), issued in response to a Petition filed by Illinois Bible Study Group (petitioner), proposing the allotment of Channel 296A to Lynnville, Illinois, as that community's first local FM service. Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. As indicated in the *Notice*, Channel 296A can be allotted to Lynnville in conformity with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules.[1]

3. We believe the public interest would be served by the allotment of Channel 296A to Lynville, Illinois, as that community's first FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lynnville, Illinois	296A

4. The window period for filing applications will open on **September 27, 1988,** and close on **October 27, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are 39-41-13 and 90-20-45.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-602

In the Matter of

Amendment of Section 73.202(b),	RM-6091
Table of Allotments,	
FM Broadcast Stations.	
(Roseburg, Oregon)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of Michael R. Wyatt (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 229 (1988), proposing the substitution of Channel 276C2 for Channel 276A at Roseburg, Oregon, and the modification of its license for Station KRSB-FM to specify operation on the higher powered channel. Petitioner filed comments reiterating his intention to apply for the channel, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 276C2 to Roseburg, Oregon, since it could provide the community and its environs with expanded radio service. Channel 276C2 can be allotted to Roseburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) west to accommodate petitioner's desired transmitter site.[2] As proposed, we shall also modify petitioner's license for Station KRSB-FM to specify operation on Channel 276C2 in lieu of its present Channel 276A.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Roseburg, Oregon	276C2

4. IT IS FURTHER ORDERED, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Michael R. Wyatt for Station KRSB-FM, Roseburg, Oregon, IS MODIFIED effective **September 26, 1988,** to specify operation on Channel 276C2 in lieu of Channel 276A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner's late filed comments were accompanied by a request for their acceptance. Petitioner states that contrary to customary practice, a copy of the *Notice* was not served on either the petitioner or its legal counsel. Thus it was unaware of the need to file an expression of continuing interest until after the period for filing such comments had closed. We shall accept petitioner's comments for the purpose of expressing continuing interest.

[2] The coordinates for this allotment are North Latitude 43-14-43 and West Longitude 123-38-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-396

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Gregory, Texas) — RM-5955

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Gregory Associates (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 5929 (1987), proposing the allotment of Channel 283A to Gregory, Texas, as that community's first FM service. Petitioner filed supporting comments reiterating its intention to apply for the channel.

2. Channel 283A can be allotted to Gregory in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1] Since Gregory is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence has been obtained from the Mexican government.

3. In view of the above, we have determined that the public interest could be served by allotting Channel 283A to Gregory, Texas, as that community's first local FM service.[2] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 26, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Gregory, Texas	283A

4. The window period for filing applications will open on **September 27, 1988,** and close on **October 27, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The reference coordinates are 27-55-30 and 97-17-36.

[2] The Commission is currently considering a counterproposal to allot Channel 275C2 to Gregory, Texas, in MM Docket No. 87-42, 52 FR 7625, March 12, 1987. If approved, that proposal would provide Gregory with a second local FM service.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-75

In the Matter of

Amendment of Section 73.606(b) RM-5334
Table of Allotments
TV Broadcast Stations
(Panama City, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 12, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission is the *Notice of Proposed Rule Making*, 3 FCC Rcd 1057 (1988), proposing the allotment of UHF television Channel *68 to Panama City, Florida for noncommercial educational use. The *Notice* was adopted in response to a petition filed by Nolan Ball.

2. In his comments petitioner states that he does not wish to pursue his Petition proposing the allotment of UHF television Channel *68 to Panama City, Florida.

3. Accordingly, IT IS ORDERED, That the petition of Nolan Ball requesting the allotment of UHF television Channel *68 at Panama City, Florida is HEREBY DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-107

In the Matter of

Amendment of Part 15 of the
Commission's Rules Concerning
Input Selector Switches Used
In Conjunction with Cable
Television Service

ERRATUM

Released: August 12, 1988

On July 11, 1988. the Commission released a Memorandum Opinion and Order (FCC 88-208) in the above captioned proceeding. In the Appendix, Section 15.616, information regarding the sources of the referenced measurement procedure MP-9 was omitted. A note at the end of Section 15.616(e) should read:

> Note: MP-9 is available from the National Technical Information Service (NTIS) located at 5285 Port Royal Road, Springfield, Virginia 22161 and from the Commission's current duplicating contractor, whose name is available from the Commission's Consumer Assistance Office.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

ONYX CELLULAR CORPORATION — File No. 43581-CL-P-214A-86

For a construction permit to establish a cellular system operating on frequency block A in the Domestic Public Cellular Radio Telecommunications Service for the Richland-Kennewick-Pasco, Washington Metropolitan Statistical Area (MSA)

ORDER ON RECONSIDERATION

Adopted: August 1, 1988; Released: August 12, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On October 27, 1986, the application of Onyx Cellular Corporation (Onyx) was selected first in the non-wireline lottery for the Richland-Kennewick-Pasco, Washington (Richland) MSA. L.E. Smith (Smith), selected second in the lottery, filed a petition to deny Onyx's application, and Onyx filed a reply. On December 9, 1987, the Mobile Services Division (MSD) released a *Memorandum Opinion and Order* (*Order*) [1] that denied Smith's petition to deny, except Onyx was ordered to file certain engineering justifications. Smith has filed a petition for reconsideration concerning the issue of site availability, and Onyx has filed an opposition. For the reasons set forth below, we conclude that Onyx lacked reasonable assurance of site availability at the time of filing, and thus we dismiss the Onyx application.[2]

Petition for Reconsideration

2. Smith claims that the *Order* erred in finding that Onyx had reasonable assurance of site availability at the time its application was filed and, therefore, that the Onyx application should be dismissed. According to Smith, the affidavit from Johnnie Reeves, a real estate broker, submitted with the petition to deny, supports the conclusion that Onyx's application falsely certified that it had obtained reasonable assurance of site availability. Smith argues that the declaration of the site owners, Mr. and Mrs. Wilder Eby, proves not only that the site option contract was entered into several months after Onyx filed its application, but also that Onyx lacked reasonable assurance of site availability prior to filing its application. Moreover, Smith alleges that the MSD finding of site availability in the instant case is inconsistent with the decision in CPS Telecom, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 4060 (1987), *recon. pending* (*CPS*), in which the MSD dismissed a cellular application for lack of reasonable assurance of site availability at the time of filing.

Opposition

3. Onyx asserts that the petition for reconsideration should be summarily dismissed since it does not raise any new arguments, but rather reargues matters previously addressed in the petition to deny. According to Onyx, Smith's petition to deny relied on a "hearsay affidavit from its own agent" (Onyx Opposition at 4) and, therefore, has not met its burden of proof with an affidavit based on personal knowledge. Onyx contends that Smith's reliance on *CPS* is misplaced because that case erroneously accepted a hearsay affidavit from a third party rather than the site owner.

Discussion

4. Section 22.15(a)(1) of the Commission's Rules requires that "[a]pplications for fixed stations shall list the proposed antenna site. The applicant shall have obtained reasonable assurance that it can use the site." The Revision and Update of Part 22 of the Public Mobile Radio Service Rules, *Report and Order*, 95 FCC 2d 769 (1983) (*PMS Order*) stated that, at the time an application is filed, the applicant must determine that there is space available on an existing building or tower, or, if a new structure is to be built, that the property is available for such use and that it is reasonable to anticipate that it may use this space. In discussing at what stage reasonable assurance should be obtained, the Commission stated that:

> Because of the time lag between the filing and granting of an application, it is not uncommon for an applicant to lose its original site. For that reason, the certification is tied to *the time of filing the application*, not to the time it is reached for processing.

PMS Order, 95 FCC 2d at 778, n. 13 (emphasis added).

5. In addition, the Commission noted that an applicant need not have a lease or an option to lease in order to show reasonable assurance of site availability. *Id.* at 778. Because the "reasonable assurance" standard for site availability has been used for some time in all areas of licensing, there is considerable case law defining the level of commitment required to meet the standard. It is well-established that a mere belief that the site will be available is not reasonable assurance. William F. and Anne K. Wallace, *Memorandum Opinion and Order*, 49 FCC 2d 1424, 1427 (Rev. Bd. 1974); Cannon Communications Corporation, *Decision*, 101 FCC 2d 169, 173 (Rev. Bd. 1985). Also, it is fundamental that the site owner, lessee, or an agent must be contacted. *See* Celcom Communications Corporation of Georgia, *Memorandum Opinion and Order*, 52 Rad. Reg. 2d (P & F) 1674, 1681 (1983).

6. At issue is whether Onyx had reasonable assurance of site availability at the time it filed its application. The Onyx application was filed on April 26, 1986, and the lottery for the Richland market was held on October 27, 1986. Smith charges that Onyx did not contact the site owners, Mr. and Mrs. Eby, to seek oral assurance of the site availability until several months after the Onyx application was filed with the Commission. (Smith Petition to Deny at 8.) To support its allegation, Smith submits an affidavit from Johnnie Reeves, a realtor, in which Mr. Reeves states that a telephone conversation with the site owners revealed that they were initially contacted by an Onyx representative in November, 1986. Onyx counters with a declaration signed by Mr. Eby, who states that "I

have reviewed an affidavit sent to me by Johnnie Reeves. I did not sign the affidavit because it does not accurately reflect the facts." (Onyx Reply to Petition to Deny, Exhibit 4, Declaration of Wilder S. Eby.)

7. In reviewing the pleadings, we were concerned by the fact that Onyx's declaration does not state whether the applicant or its agent contacted the site owners prior to filing the application. The only date mentioned in the declaration is January 29, 1987, the date Onyx and the site owners entered into the site option agreement. For this reason, by letter dated April 19, 1988, the MSD requested Onyx to provide the date that it initially contacted the site owners regarding the availability of the proposed Richland market cell site. [3] In response to this inquiry, Onyx submitted a letter from Norma Stratemeier,[4] the applicant's sole stockholder, which states in pertinent part:

> To the best of my knowledge, the Ebys were first contacted on behalf of Onyx in approximately *November, 1986*. At the time of filing the application, I relied upon the engineer to prepare the engineering section of the application (which contains the site availability question) in compliance with applicable FCC requirements. I subsequently learned that the engineer had failed to contact the Ebys. I did not know this at the time I signed and filed the application. I used an agent to obtain the contract with the Ebys, a copy of which is on file at the Commission.

Norma Stratemeier letter, May 11, 1988 (emphasis added).

8. This letter clearly demonstrates that neither Onyx nor its agent contacted the site owners prior to filing the application on April 26, 1986. Therefore, we find that Onyx did not have reasonable assurance of site availability at the time its application was filed, as required by our Rules and case precedent. Our finding is consistent with the holding in *CPS*, *supra*, in which a cellular application was dismissed for lack of reasonable assurance of site availability at the time of filing. In that case, the site owner, Chriswell White, submitted an affidavit stating that the applicant contacted him "sometime ago" and that he "could not say" what date he had been contacted. The MSD was persuaded by "the noncommital words found in Mr. White's affidavit" that the applicant did not contact the site owner before it filed its application. *CPS*, 2 FCC Rcd at 4060, para. 8. In the instant case, the letter from Norma Stratemeier establishes conclusively that Onyx did not obtain reasonable assurance of site availability prior to filing. Without such reasonable assurance, Onyx incorrectly certified that its application was complete in every respect.

9. Furthermore, Onyx is incorrect in suggesting that entering into a site lease agreement after the lottery nullifies the requirement of obtaining reasonable assurance before filing an application. While a signed option contract may serve as evidence that the site owner was contacted prior to the filing of an application, it is in no way a substitute for contacting the site owner, the lessee or an agent before filing. Hence, we dismiss the Onyx application, and grant Smith's petition for reconsideration.

ORDERING CLAUSES

10. WHEREFORE, for the foregoing reasons, IT IS ORDERED that the application of Onyx Cellular Corporation, File No. 43581-CL-P-214A-86, IS DISMISSED.

11. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by L.E. Smith IS GRANTED.

12. This Order is issued under Section 0.291 of the Rules and is effective on its release date. Applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of the public notice of this Order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Operations
Common Carrier Bureau

FOOTNOTES

[1] Onyx Cellular Corporation, *Memorandum Opinion and Order*, 2 FCC Rcd 7280 (1987).

[2] On December 28, 1987, Onyx submitted the engineering justifications requested by the *Order*. In light of our finding that Onyx did not meet the reasonable assurance standard, we do not need to reach the issue of whether Onyx's supplemental engineering information is satisfactory.

[3] Section 22.13(c) of the Rules states, in pertinent part, that "applicants shall submit any additional documents, exhibits, or signed written statements of fact . . . [a]s the Commission, at any time after the filing of an application . . . may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked."

[4] In addition to the letter from Norma Stratemeier, Onyx submitted a pleading entitled "Response to Request for Information and Motion for Order to Show Cause" that raised several arguments concerning site availability, among other issues. Smith filed comments in response to this pleading, and Onyx filed a reply to Smith's comments. We have considered the arguments raised in these additional pleadings in reaching our decision.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released July 29, 1988

AMERITECH, BELL ATLANTIC, PACIFIC BELL, NEVADA BELL AND SOUTHWESTERN BELL FILE REVISIONS TO COST MANUALS

Pleading Cycle Established

In the *Joint Cost Order*, 2 FCC Rcd 1298 (1987), the Commission required certain telephone companies to file and obtain approval of manuals containing the methods they use to separate the costs of providing regulated telephone service from the costs of nonregulated activities. The carriers filed their manuals in 1987, and the Common Carrier Bureau has conditionally approved the manuals of ten companies. In the orders conditionally approving the manuals, the Bureau required the carriers to periodically update the manuals, as appropriate. Carriers must submit proposed revisions to the manuals at least 60 days prior to implementation if the revisions change the cost categories and their allocation mechanisms, or change the way that employee time is allocated. The Bureau stated that the public will be afforded an opportunity to comment on revisions of this nature.

On June 30, 1988, five companies filed proposed changes in the sections of their manuals that describe the cost categories and allocation mechanisms. (U S West filed revisions that are not subject to the notice requirement.) The Ameritech Operating Companies propose to revise certain apportionment methodologies. The Bell Atlantic Telephone Companies propose to add cost pools in certain accounts and revise the apportionment methodology for one cost pool. Southwestern Bell proposes a change in its method of determining employee time, and revisions to its cost pools and the allocation mechanisms. Pacific Bell and Nevada Bell propose changes in terminology (which they describe as cosmetic) in their cost apportionment tables.

Parties may file comments on the proposed revisions to the cost manuals no later than **August 15, 1988.** Replies should be filed by **August 26, 1988.**

Copies of the carriers' revisions may be obtained from International Transcription Services, Inc., 2100 M Street, NW, Washington, DC 20036, (202) 857-3800. Copies are also available for public inspection in the Accounting and Audits Division public reference room, Room 812, 2000 L Street, NW, Washington, DC 20554.

For further information contact Alicia Dunnigan, (202) 632-7500.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

RAMAPO INDIAN HILLS REGIONAL HIGH SCHOOL DISTRICT — File No. BPED-821013AD

For Modification of Noncommercial Educational Station WRRH (FM)
Franklin Lakes, New Jersey

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 1988; Released: August 12, 1988

By the Commission:

1. The Commission has before it for consideration an application for review filed by Ramapo Indian Hills Regional High School District (Ramapo), licensee of Station WRRH (FM), Franklin Lakes, New Jersey, arising out of the July 14, 1986 denial of the applicant's petition for reconsideration of the dismissal and return of its above-captioned application for modification of facilities.

2. Ramapo has been licensed since 1963 to operate WRRH as a Class D (10-watt) noncommercial educational FM station on Channel 204 (88.7 MHz) from its George Street transmitting antenna location in Franklin Lakes, New Jersey.[1] In response to the Commission's *Public Notice* A-52 (Mimeo No. 6396, released September 15, 1982) notifying potential applicants of the October 21, 1982 "cut-off" date for the filing of applications to be considered mutually exclusive with an application filed by William Paterson State College Student Cooperative Association (File No. BPED-820330AM) to serve Wayne, New Jersey, Ramapo filed an application to upgrade its facilities to minimum Class A (100-watt) status. While this proposal would have increased WRRH's coverage area by approximately 190%, it would also have violated Section 73.509 of the Commission's Rules by creating prohibited overlap of its signal with the signals of the licensed second-adjacent channel facilities of noncommercial educational stations WFDU (Teaneck, New Jersey) and WBGO (Newark, New Jersey). Although patently not in accordance with the Commission's Rules, Ramapo's application was accompanied by "an appropriate request for waiver" and was therefore found acceptable for filing pursuant to Section 73.3566(a) of the Commission's Rules.[2]

3. In its waiver request, Ramapo claimed that the power increase would cause small amounts of interference to the protected service contours of WBGO and WFDU, but that the increase was necessary to continue interference- free service to the area served by the Ramapo Indian Hills High School District. *Ramapo Application*, at page 2-9 of Engineering Exhibit. On November 6, 1984, the Mass Media Bureau denied Ramapo's waiver request, ruling that Ramapo failed to substantiate its *de minimis* interference claim because no data on the population in the affected interference areas was provided and because Ramapo failed to demonstrate that its proposal was the most technically feasible method to improve its facilities. *Letter to Bud Van Ganderson from Larry D. Eads, Chief, Audio Services Division.* [3]

4. Ramapo petitioned on December 20, 1984, for reconsideration of this action, repeating its claim of *de minimis* interference and arguing for the first time that it was "a bona fide mutually exclusive applicant with the renewal applications of WBGO and WFDU" since it was "on file and accepted at the time that the licenses of WBGO and WFDU expired on June 1, 1984."[4] *Reconsideration*, at page 3. Therefore, Ramapo claimed that it was entitled to consolidation with these renewal proceedings. In its opposition to Ramapo's petition, Fairleigh Dickinson University, licensee of FM station WFDU, described the affected interference area as "among the most densely populated regions in New Jersey" and claimed that "thousands of people would suffer ruinous interference as a result of implementation of Ramapo's proposal." *Opposition*, at paragraph 5. Fairleigh Dickenson also suggested that a move of Ramapo's transmitting facility to its second studio site at Indian Hills High School in Oakland Township could result in interference-free operations. *Opposition*, at paragraph 4. The Mass Media Bureau denied Ramapo's request for reconsideration, again emphasizing that Ramapo's waiver request failed to quantify the population which would be adversely affected by the proposed upgrade and noting that the applicant expressly stated in Section I, Item 5 of its application (presently Section I, Item 3) that its application was not mutually exclusive with the renewal application of any existing station.[5] *Letter to Donald E. Martin, P. C. from Larry D. Eads, Chief, Audio Services Division*, dated July 14, 1986. The Bureau further stated that Ramapo failed to exercise either its pre-grant right to claim mutual exclusivity with the WBGO and WFDU renewal applications (BRED-840201BG and BRED-840201DK, respectively) or its post-grant right (pursuant to Section 1.106) to request reconsideration of the May 17, 1984 grants of these renewal applications. Having denied Ramapo's request for reconsideration, the Bureau granted William Paterson's application to serve Wayne, New Jersey.

5. In its application for review, Ramapo fails to challenge the Bureau's denial of its request for waiver of § 73.509 and concentrates entirely on its alleged procedural right to a comparative hearing with the WBGO and WFDU renewal applications. Specifically, Ramapo alleges that its application "was dismissed without a hearing in violation of Section 309 of the Communications Act, the *Ashbacker* decision, and the line of cases following it" and that the denial of its waiver request did not defeat the application's acceptability against a renewal application. *Application for Review*, at page 6. In opposition, Fairleigh Dickinson University and Newark Public Radio, licensee of WBGO(FM), argue that Ramapo's application and waiver request clearly indicate that it wished to avoid mutual exclusivity with WBGO and WFDU and Ramapo cannot now claim the rights of a mutually exclusive applicant through a "post-hoc rationalization as to why its application should be given further consideration by the Commission." *Joint Opposition to Application for Review*, at page 4. WBGO and WFDU further argue that no Commission policy favors the retention of a defective application in pending status so that "years later, it can be considered on a mutually exclusive basis with a renewal application." *Id.*, at page 5.

6. Under *Ashbacker Radio Corp. v. FCC*, 306 U.S. 327 (1945), two proposals are mutually exclusive only when it can be said that a grant of one would effectively preclude a subsequent grant of the other. A claim by one applicant that its proposal conflicts with another's does not, *ipso facto*, create mutual exclusivity, *KLUC Broadcasting Co.*, 41 RR 2d 863, 864 (1977), *application for review denied*, 42 RR 2d 178 (1978), and thereby require that the applications be designated for hearing.[6] "The determination of whether two proposals actually involve 'conflicting claims' must be made by the Commission on an informal basis after careful review of all available data." *Mansfield Broadcasting Company*, 8 RR 2d 155, 158 (1966), *reconsideration denied*, 4 FCC 2d 154 (1966).

7. To claim mutual exclusivity with pending license renewal applications, Section 73.3516(e) of the Rules requires that construction permit applications be "tendered for filing by the end of the first day of the last full calendar month of the expiring license term." This "cut-off" date is necessary to provide "a date certain, prior to the expiration of the current license term, by which the Commission and the license renewal applicant may be informed concerning the filing of mutually exclusive applications." *Notice of Proposed Rule Making* in Docket No. 18495, 16 FCC 2d 858 (1969). This procedure "should cause no hardship [to the construction permit applicant]," the Commission stated, "since persons interested in filing applications mutually exclusive with license renewal applications have ample notice, in our rules, of the fixed dates when all broadcast licenses in given geographical areas regularly expire, and of the requirement for the filing of license renewal applications 90 [now 120] days before the expiration of the current license term." *Id.*, at 859.

8. In the instant matter, Ramapo could have claimed mutual exclusivity with the WBGO and WFDU renewal applications by amending its application prior to the May 1, 1984 "cut-off" date to change its response to Section I, Item 5 from "No" to "Yes," thereby indicating that it wished to be considered mutually exclusive with these applications rather than seeking a waiver to avoid a conflict. Ramapo alleges that its failure to file such an amendment was "insignificant" since "[t]he purpose of Section 1. [sic] is to ensure that applicants provide the Commission with information it might not otherwise know. . . [and] the Commission had to know that WBGO and WFDU filed renewal applications." *Application for Review*, at page 6. We disagree. Section 1.65 does not simply require applicants to inform the Commission of matters we "might otherwise not know." Rather, this rule imposes upon applicants the responsibility of maintaining the continuing accuracy and completeness of the information contained in their applications and requires that applications be amended within 30 days to report any additional or corrected information which may be of decisional significance. The fact that Ramapo wished to change its proposal from one designed to coexist with the WBGO and WFDU facilities to one mutually exclusive with those stations' license renewals is clearly a fact of decisional significance which had to be reported to the Commission. Having failed to report such a change, the staff reasonably concluded that Ramapo wished to obtain a waiver of § 73.509 rather than oppose the WBGO and WFDU renewals. The Commission's "knowledge" of the WBGO and WFDU renewal applications did not in any way either satisfy Ramapo's responsibility to inform the Commission of its desired change in status or excuse its failure to file a § 1.65 amendment.

9. Ramapo was required pursuant to 47 C.F.R. § 73.3514(a) to provide all the information called for in its application form and, when that information was "no longer substantially accurate or complete in all significant respects," to amend its application pursuant to 47 C.F.R. § 1.65. This procedure is consistent with both the wide discretion afforded the Commission by Section 154(j) of the Communications Act of 1934, as amended, to fashion procedures "as will best conduce to the proper dispatch of business and to the ends of justice" (*See also*, 47 U.S.C. § 303(r)) and with the specific intent of Section 1.65 to place upon applicants the responsibility for reporting any substantial change "in circumstances pertaining to basic qualifications . . . and factors urged as basis for grant or a comparative preference." *Report and Order* in Docket 18467, 3 RR 2d 1622, 1624 (1964). As a seasoned licensee of 25 years duration, Ramapo's lack of diligence in reporting a substantial change in its status against the WBGO and WFDU license renewal applications is inexplicable. With seven renewals of its original license (BLED-388) to date, Ramapo should be fully cognizant of the rules governing the license renewal process. "We expect a diligent applicant to apprise [itself] of the applicable Commission regulations and to take steps necessary to comply with those requirements." *Bronco Broadcasting Co., Inc.*, 58 FCC 2d 909, 912 (1976). We can only conclude, therefore, that Ramapo's acknowledged failure in making a timely claim of mutual exclusivity is the result of its own lack of diligence rather than of any miscarriage of Commission processing routines.

10. Finally, Ramapo claims that its waiver request indicates, by virtue of the prohibited overlap, that its application is mutually exclusive with the WBGO and WFDU renewals and it is therefore clear that all three applications cannot be granted. Citing *Mansfield Broadcasting Company*, 8 RR 2d 155, Ramapo claims that a hearing is warranted in this case because grant of the renewals precludes grant of its own application.[7] This argument is without merit. In requesting a waiver of 47 C.F.R. § 73.509, Ramapo implicitly suggested that its proposal was *not* to be considered mutually exclusive with the WBGO and WFDU renewals since all three applications could be granted if a waiver of the allegedly *de minimis* overlap was granted, and that this was Ramapo's desired result. This implicit suggestion was confirmed by Ramapo's negative response to Section I, Item 5. Once advised that the showing in support of its waiver request lacked critical information, Ramapo cannot simply change course and assert the rights of a mutually exclusive applicant nearly eight months after the cut-off date for filing applications mutually exclusive with the WBGO and WFDU renewal applications and seven months after grant of these renewal applications. Moreover, since the possibility of a waiver, given the appropriate showing, has never been rejected out of hand, it can not be said that grant of the renewals precluded grant of Ramapo's proposal.

11. At various stages in this proceeding, Ramapo had several options available to it. Upon receiving notice that its request for waiver lacked critical information, Ramapo could have supplemented the waiver request to provide the necessary information on the population affected by the proposed changes; it chose not to do so. Ramapo could have also amended its application to advise the

Commission that its proposal was to be considered mutually exclusive with the WBGO and WFDU renewals. Again, no such amendment was filed. Finally, once the WBGO and WFDU renewals were granted, Ramapo could have requested, through a timely filed petition for reconsideration, that these grants be set aside and that its application be consolidated with those renewal proceedings. Because Ramapo failed to exercise any of these options, we agree with WBGO and WFDU that Ramapo cannot be permitted to fashion a "post-hoc rationalization" for giving its application further consideration.

12. Accordingly, IT IS ORDERED, That the application for review filed by Ramapo Indian Hills Regional High School District IS DENIED.

13. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, shall send, by Certified Mail-Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] In the *Second Report and Order* in Docket 20735, 43 Fed. Reg. 39704, 39708 (1978), the Commission ruled that "low power operations [10-watt] cannot be permitted to function in a manner which defeats the opportunity for other more efficient operations which could serve larger areas." Accordingly, the Commission directed such licensees to move their Class D operations, in preferential order, to one of the nonreserved (commercial) channels, to Channel 200 or to the least-preclusive reserved band (noncommercial) channel. Those stations seeking to exempt themselves from this requirement and, ultimately, reclassification to class D secondary status, could file an application to increase their facilities to at least the minimum Class A level of 100 watts effective radiated power.

[2] *Public Notice* B-34 (Mimeo No. 3023, released March 21, 1983).

[3] Specifically, the Bureau noted that Ramapo failed to address alternative solutions to the potential interference problem such as the utilization of a directional antenna and/or a reduction in the antenna height above average terrain.

[4] The deadline for filing applications mutually exclusive with the WBGO and WFDU renewal applications was May 1, 1984. Because no applications claiming mutual exclusivity with these renewals had been filed, the Bureau granted the WBGO and WFDU renewals on May 17, 1984. In an unrelated action, WBGO's renewal was rescinded July 3, 1984, based on that application's established mutual exclusivity with Drew University's proposal (File No. BPH-831212AE) to upgrade its Madison, New Jersey facilities to Class A status.

[5] Section I, Item 5 (presently Section I, Item 3) of FCC Form 340 specifically requests whether the application being filed is mutually exclusive with a license renewal application and, if so, requires the applicant to identify the call sign and community of license of the station seeking renewal. Ramapo responded negatively to this question thereby expressly representing that its application was not mutually exclusive with any license renewal.

[6] Furthermore, it is well established that the Commission need not hold a hearing on applications it rejects for failing to meet its technical acceptance rules. *Columbia Communications Corporation v. FCC*, 832 F 2d. 189, 193 (D.C. Cir. 1987), citing *Storer Broadcasting*, 351 U.S. at 202, 205, 76 S. Ct. at 770, 771-72 (1950).

[7] In *Mansfield*, the Commission refused to sever a *pending* AM application from a larger group of mutally exclusive applications and consolidate it for hearing with another application not in the group. The Commission held that no prohibited overlap existed between the two applications and the grant of one application would not therefore preclude grant of the other. Ramapo mistakenly titles this citation Ocean County Radio Broadcasting. Since Ramapo's references are contained within Mansfield, we will use the correct title in the body of this Order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CONTEL ASC — File No. CSG-88-042-ML
File No. CSG-88-043-ML

Application for authority to modify its receive only earth station at Bellmawr, New Jersey, to add transmitting authority for provision of INTELSAT Business Services

Application for authority to modify its domestic earth station at Murphy, Texas, for provision of INTELSAT Business Services

ORDER AND AUTHORIZATION

Adopted: August 2, 1988; Released: August 12, 1988

By the Chief, International Facilities Division:

1. The captioned applications, filed on May 26, 1988, by Contel ASC, request authority, pursuant to Title III of the Communications Act of 1934 and Section 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962, to modify its earth stations at Bellmawr, New Jersey, and Murphy, Texas, for the provision of INTELSAT Business Services (IBS). The applications were placed on public notice on June 1, 1988. No comments were received. Contel ASC has been granted blanket authority to establish and operate channels of communication between the U.S. and various international points for provision of IBS.[1]

2. At Bellmawr, New Jersey, Contel ASC proposes to modify its existing receive-only IBS earth station (5.6 meter) by adding transmit capability and an additional receive frequency band for operations with appropriate Atlantic Ocean Region (AOR) INTELSAT V satellites to provide IBS. The proposed modification will comply with INTELSAT Standard E-2 technical parameters and will allow operations in the transmitting frequency band 14.0-14.5 GHz and add the receiving frequency band 11.7-12.2 GHz to Contel ASC's existing 10.99-11.031 GHz receive frequency band. At Murphy, Texas Contel ASC will modify its existing 13 meter domestic earth station antenna to provide IBS service. The proposed modification will comply with INTELSAT Standard B technical parameters and allow communications with appropriate AOR INTELSAT V satellites operating in the 6/4 GHz band.

3. In its Report and Order in the *Earth Station Ownership Proceeding* in CC Docket No. 82-540, the Commission modified its policy on the ownership and operation of U.S. international earth stations that access the INTELSAT system by permitting carriers, individually or jointly, to own and operate their own earth station facilities.[2] In that Order, the Commission distinguished between IBS and/or television earth stations and multipurpose stations. It determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multipurpose stations. It also determined that the public interest requires that IBS be introduced in the United States as soon as possible. The Commission therefore concluded that it would consider only minimal legal, financial, and technical qualifications of the applicant as required by Section 308 and 319 of the Communications Act, when processing IBS and television service applications. The Commission further concluded that absent special problems, it would treat these applications as routine and expeditiously process them. [3] The Commission has granted many applications to construct and operate IBS earth stations based on this approach.[4]

4. Contel ASC has the legal, technical and financial qualifications to construct and operate the proposed facilities. Contel ASC is a common carrier pursuant to the Communications Act of 1934 and provides various international services. The proposed earth station modifications comply with INTELSAT performance criteria for IBS stations. Contel ASC has completed the necessary frequency coordination for each station.

5. The scope of operation of the proposed stations will be the same as that permitted by the Commission in previous IBS authorizations. We will limit the authorizations to the provision of IBS and those video services compatible with the stations' digital format operation. To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television service category, we will not restrict operation of the proposed stations. However, it may not provide any service which falls outside the IBS/television service category. Any authorization to use the proposed stations as a multipurpose earth station would require a determination as to traffic and revenue diversion from existing multipurpose earth stations that may result.

6. Upon consideration of the applications, we find that authorization of the requested earth station modifications for the provision of IBS services is required by the present and future public convenience and necessity.

7. Accordingly, IT IS ORDERED that applications File Nos. CSG-88-042-ML and CSG-88-043-ML ARE GRANTED, and Contel ASC is authorized to modify and operate the proposed earth station facilities at Bellmawr, New Jersey, and Murphy, Texas, in accordance with the respective applications and existing authorities to provide IBS and related digital video services.[5] Contel ASC shall use the new call sign KA-216 for its international operations at the Murphy, Texas, station. The applicant shall provide the Commission with a summary of the equipment which was actually installed within two weeks of the release date of this order.

8. Special Temporary Authorities, CSG-88-042-ML/T-1 and CSG-88-043-ML/T-1, granted to Contel ASC on June 3, 1988, and the CSG-88-042-ML/T-1 modified on June 17, 1988, for these facilities are hereby terminated.

9. This order is issued under Section 0.291 of the Commission's Rules and Regulations and is effective upon release. Petitions for reconsideration under Section 1.106

or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* AT&T et al., File Nos. I-T-C-85-035 *et al.* Mimeo No. 3220 (released March 18, 1985).

[2] Earth Station Ownership, 100 FCC 2d 250 (1984).

[3] Upon grant of an IBS/television service application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the use of the authorized facilities to the provision of IBS and/or television services, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[4] *See* cases cited in Satellite Gateway Communications, Inc., Mimeo No. 2696 (released March 4, 1986) and American Telephone and Telegraph Co., Mimeo No. 3327 (released March 25, 1986).

[5] This authorization is not to be construed as permitting the provision of IBS between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRAC COMMUNICATIONS, INC.,
Complainant,

v. File No. E-88-77

DETROIT CELLULAR TELEPHONE COMPANY,
Defendant.

ORDER

Adopted: August 3, 1988; Released: August 12, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 31, 1988, the United States District Court for the Eastern District of Michigan entered an order which referred certain issues before it to this Commission under the doctrine of primary jurisdiction. *TRAC Communications, Inc. v. Detroit Cellular Telephone Co.*, No. 87-CV73787DT (E.D. Mich. May 31, 1988) (Referral Order). On June 21, 1988, pursuant to advice provided by Commission counsel, TRAC Communications, Inc. (TRAC) filed the captioned formal complaint requesting resolution of the Referral Order issues. In accordance with 47 U.S.C. § 208 and 47 C.F.R. § 1.734(d), the Commission, on June 24, 1988, served a copy of the complaint on the defendant and directed that an answer be filed no later than July 25, 1988.

2. On June 30, 1988, defendant Detroit Cellular Telephone Co. (DCTC) filed a petition for declaratory ruling with the Commission also requesting resolution of the Referral Order issues. Subsequently, on July 25, 1988, DCTC filed its answer to the formal complaint in which a copy of its petition is attached as Appendix A and incorporated by reference. *Answer* at 6 n.8. Simultaneously, DCTC filed a motion to consolidate the formal complaint proceeding and its petition for declaratory ruling, with the petition "becoming the surviving document." *Petition* at 2. In support of its request for consolidation DCTC argues that: 1) the Commission has a history of utilizing "notice and comment" procedures to resolve issues referred by the federal courts; 2) both the formal complaint and the petition involve the same parties and relate substantially to the same questions and subject matter, and; (3) the formal complaint fails to address one of the issues identified in the Referral Order, whereas the petition fully addresses the issues referred by the district court.

3. We have carefully and fully examined the pleadings involved in this dispute, and agree with defendant that the pleadings involve the same parties, relate substantially to the same questions and subject matter, and therefore that consolidation of the proceedings will promote administrative efficiency. Accordingly, we will so consolidate. However, we do not agree that a declaratory ruling proceeding should be the surviving forum for resolution of the issues in controversy. The issues referred by the district court, and as restated by both parties in their respective pleadings, appear to have little, if any, general applicability, other than the precedential value their resolution may ultimately have. Rather, the issues arise from a dispute involved directly with and enveloped solely by the two parties, TRAC and DCTC. Thus, no useful public purpose would be served by employing "notice and comment" procedures to resolve the issues. Indeed, resolution of issues such as those referred herein (*i. e.* alleged violation of provisions of the Communications Act and Commission policies) is specifically contemplated by the formal complaint procedures. *See* 47 U.S.C. § 208 and 47 C.F.R. § 1.721. We therefore, consolidate the formal complaint and the petition for declaratory ruling into the captioned formal complaint proceeding.

4. Accordingly, IT IS ORDERED, pursuant to 47 U.S.C. §§ 154(i) and (j) and authority delegated under 47 C.F.R. § 0.291, that the motion to consolidate filed by Detroit Cellular Telephone Company IS GRANTED to the extent indicated herein and otherwise IS DENIED.

5. IT IS FURTHER ORDERED, that the captioned formal complaint filed by TRAC Communications, Inc. and the petition for declaratory ruling filed by Detroit Cellular Telephone Co. ARE CONSOLIDATED into the captioned proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-104

In the Matter of

Amendment of Section 73.202(b),	RM-5425
Table of Allotments,	RM-5612
FM Broadcast Stations.	RM-5989
(Jennings, Erath, Mamou and	RM-5990
Maurice, Louisiana; and Groves	
and Nederland, Texas)	

ERRATUM

Released: August 12, 1988

On July 29, 1988, the Commission's Mass Media Bureau released a Report and Order (DA 88-1132) in the captioned proceeding. Rule Making number 5972 should have been omitted from the list of Rule Making numbers shown in that document.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-276

In the Matter of

Amendment of Section 73.202(b), RM-5716
Table of Allotments,
FM Broadcast Stations.
(Seabrook, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1988; Released: August 3, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of KRTS, Inc. (petitioner),[1] licensee of Station KRTS(FM), Channel 221A, Seabrook, Texas, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd 4666 (1987), proposing the substitution of Channel 221C2 for Channel 221A at Seabrook and modification of the license of Station KRTS(FM) to specify operation on the higher class cochannel. Petitioner filed supporting comments reiterating its intention to promptly apply for the improved facilities at Seabrook. In response to the *Notice*, supporting comments were also filed by Roy E. Henderson (Henderson) and Calvary Temple of Baytown, Inc. (Calvary), the applicant for Channel 218A at Baytown, Texas.[2] Reply comments were filed by: petitioner; Henderson; Jennings Broadcasting Company, Inc. (Jennings Broadcasting), licensee of Station KJEF-FM, Jennings, Louisiana; Voice in the Wilderness Broadcasting, Inc. (Voice), licensee of Station KTFA(FM), Groves, Texas; and Sandlin Broadcasting Company, Inc. (Sandlin), licensee of Station KMKS-FM, Bay City, Texas. [3] Oakdale Limited Partnership (Oakdale Limited), licensee of Station KICR-FM, Channel 285A, Oakdale, Louisiana submitted a motion to consolidate this proceeding with MM Docket No. 87-196 (Lafayette, Louisiana), MM Docket No. 87-208 (Bay City, Texas) and MM Docket No. 87-104 (Jennings, Louisiana and Groves, Texas).[4]

2. Henderson, in his comments, continues to support the proposed upgrade at Seabrook. Henderson states that Channel 221C2 would provide Seabrook with its first wide area coverage FM facility and, as such, would serve an additional 590,272 persons within its 1 mV/m contour.

3. Petitioner, in its reply comments, acknowledges that an agreement has been reached with Calvary which resolves the potential short spacing problem between the Seabrook upgrade and the pending application for Channel 218A at Baytown, Texas. Thus, the elimination of the conflict resolves all potential impediments to the adoption of the proposed rule making.

4. In reply comments, Henderson urges the Commission to move forth on the adoption of the proposal in light of the fact that no impediment to the upgrade at Seabrook exist.

5. Jennings Broadcasting, Voice and Sandlin, in reply comments, support the grant of the proposal stated herein and several interrelated proposals.

6. As stated in the *Notice*, final action herein would be delayed until the grant of separate proposals at Bay City, Texas and Groves, Texas. *See* footnote 4 *supra*. Therefore, in light of decisions in those proceedings, we are now able to render a decision herein.

7. The channel substitution can be made consistent with the Commission's minimum separation requirements with a site restriction of 20.3 kilometers (12.6 miles) southeast of Seabrook.[5] The restriction is necessary to avoid short spacings to Stations KTRU(FM) (Channel 219A) and KQUE(FM), (Channel 275C1) at Houston, Texas, and Station KETX-FM (Channel 222C2) at Livingston, Texas. In addition, the Bay City and Groves stations must be licensed in accordance with the Commission's recent action upgrading those facilities before the Seabrook upgrade can be effectuated. We shall serve copies of this *Order* on the Bay City and Groves licensees.

8. In compliance with the *First Report and Order* in MM Docket No. 86- 144, 52 FR 8259, March 17, 1987, our engineering analysis concludes that Channel 221C2 at Seabrook will have no significant impact on the availability of noncommercial educational channels in the area. In fact, our study indicates that the upgrade at Seabrook would cause no additional preclusion over and above that already caused by the FM stations on Channel 221A at Seabrook, Channel 219A, Houston, Texas, and Channel 220A, Corpus Christi, Texas, and by the TV stations on Channel 6 in Beaumont and Corpus Christi, Texas.

9. After careful consideration of the aforementioned, we conclude that the public interest would be served by substituting Channel 221C2 for Channel 221A at Seabrook. As proposed, we shall also modify the license of Station KRTS(FM) to specify operation on Channel 221C2, in accordance with Section 1.420(g) of the Commission's Rules.

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 16, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Seabrook, Texas	221C2

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KRTS, Seabrook, Texas, IS MODIFIED, to specify operation on Channel 221C2 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Report and Order*, to the following: Margaret K. Sandlin, P. O. Box 789, Bay City, Texas 77414, licensee of Station KMKS-FM and Voice in the Wilderness Broadcasting, Inc., 5335 Laurel, Beaumont, Texas, licensee of Station KTFA(FM).

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. Questions related to the application process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-6908.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The original petitioner was Roy E. Henderson, formerly licensee of Station KLEF-FM, Channel 221A at Seabrook, Texas.

[2] Calvary initially filed an opposition to the proposal but subsequently requested its opposition be withdrawn. We shall comply with its request.

[3] Late-filed comments and an Addendum thereto were submitted by Harold J. Haley (Haley), licensee of Station KETX-FM, Livingston, Texas. Petitioner filed an opposition to the acceptance of the late-filed comments. We have not accepted Haley's late-filed comments in accordance with Section 1.415(d). Therefore, the opposition is rendered moot.

[4] In response to Oakdale Limited's motion oppositions were filed by petitioner and Voice. C.R. Crisler (Crisler) responded with two sets of reply comments. Oakdale Limited filed a reply to oppositions. Jennings Broadcasting filed a Motion to Dismiss. Oakdale Limited filed a motion to strike, to which Crisler submitted an opposition. In view of the fact that the consolidation request has been separately denied in MM Docket Nos. 87-196, we find no justification for consolidation herein. Thus, all subsequently filed pleadings are moot. *See Lafayette, Louisiana, recon. denied*, adopted July 13, 1988; Bay City, Texas, 53 FR 8904, March 18, 1987; and Jennings, Louisiana and Groves, Texas *et al*, adopted July 13, 1988.

[5] The restricted site coordinates are 29-25-00 and 94-54-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-452

In the Matter of

Amendment of Section 73.202(b),	RM-5970
Table of Allotments,	
FM Broadcast Stations.	
(Ellensburg, Washington)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1988; Released: August 1, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 6531 (1987), issued at the request of Lord Broadcasting Company (petitioner), licensee of Station KQBE(FM), Channel 276A, Ellensburg, Washington, proposing the substitution of Channel 276C2 for Channel 276A and modification of its license accordingly. Petitioner filed supporting comments reiterating its intention to modify the facilities of Station KQUE(FM).

2. The substitution can be made in compliance with the Commission's minimum distance separation requirements at the petitioner's current transmitter site.[1] Since this proposal is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

3. We believe the public interest would be served by substituting Channel 276C2 for Channel 276A at Ellensburg, Washington, as a first wide coverage area FM service. We are herein modifying the license of Station KQBE(FM) to specify operation on Channel 276C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 14, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Ellensburg, Washington	237A, 276C2

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KQBE(FM), Ellensburg, Washington, IS MODIFIED, to specify operation on Channel 276C2 in lieu of Channel 276A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*. the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are 47-00-21 and 120-30-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The BellSouth Telephone Companies	Transmittal Nos. 151 and 168
Tariff F.C.C. No. 1	

ORDER

Adopted: June 28, 1988; Released: June 29, 1988

By the Chief, Common Carrier Bureau:

1. On April 1, 1988, the BellSouth Telephone Companies (BellSouth) filed Transmittal No. 151 to revise the terms and conditions for providing certain interstate access services. On April 18, 1988, MCI Telecommunications Corporation (MCI) filed a petition to reject or, in the alternative, suspend and investigate Transmittal 151. BellSouth replied on April 28, 1988. The tariff is scheduled to become effective on June 30, 1988.

2. Transmittal 151 proposes, among other things, various new services and language revisions for purposes of clarification.[1] MCI objects to four provisions of the tariff proposal. First, although MCI does not oppose BellSouth's proposed Network Channel Interface (NCI) code change charges,[2] it argues that BellSouth should clarify that the change charge would not apply if a network facility reconfiguration is done for the benefit of BellSouth rather than at the customer's request, and that no NCI code change charge will apply if no network facility change actually occurs. MCI Petition at 7.

3. Second, MCI objects to BellSouth's revision of the percent of usage requirements applicable to Public Packet Switching Network (PPSN) arrangements. MCI argues that the proposed provision requires the unnecessary reporting of additional usage information and suggests that PPSN should be treated as an enhanced service, therefore exempt from access charges. *Id.* at Appendix A. Third, MCI opposes BellSouth's proposed revision stating that the term "special order" denotes an order for a Directory Assistance (DA) Service. [3] MCI submits that this provision implies that whenever DA service is requested, the access tandem facility must be designated a special order facility regardless of whether it carries DA traffic solely or a combination of traffic, and will thus incur special order charges. *Id.* Finally, MCI objects to the optional routing arrangements proposed by BellSouth which provide for the assessment of premium rates in end offices not converted to equal access. These arrangements would allow customers to route 800 access service traffic and Feature Group B (FGB) originating access traffic from non-equal access end offices over trunks with equal access capabilities, and to route Feature Group D (FGD) access service terminating access minutes to a non-equal access end office.[4]

4. In response, BellSouth confirms that it will only apply the non-recurring charge for updating NCI codes if the conversion is made at the customer's request and that the charge will be imposed only if the change in fact is made. BellSouth Reply at 3. BellSouth further submits that its proposal regarding PPSN reporting requirements was intended merely to clarify existing procedures, not to add new ones. *Id.* at 4. BellSouth also contends that PPSN is not an enhanced service, and states that it is amenable to further modification of the tariff provision if the Commission so directs. *Id.* at 4 n.9. In addition, BellSouth asserts that a special order will only be necessary when a customer wants to obtain dedicated trunk groups for the carriage of DA traffic. *Id.* at 5. BellSouth argues that this permits combined usage trunks and eliminates the need for trunk groups dedicated to DA access service, and notes that the special order to obtain dedicated facilities entails no additional charges. *Id.* at 6.

5. Finally, BellSouth submits that its proposed routing arrangements will allow customers to combine 800 access service traffic and FGB access traffic originating from nonconverted end offices with tandem-routed FGD traffic and to receive optional terminating FGD in end offices which are not converted to equal access. *Id.* at 6 n.11. BellSouth asserts that the Commission has allowed NYNEX to implement such arrangements,[5] and contends that its plan is acceptable because it is optional. *Id.* at 7.

6. By Transmittal No. 168, filed June 27, 1988, BellSouth further clarified its tariff revisions regarding NCI change charges and PPSN jurisdictional reporting requirements. The Common Carrier Bureau has reviewed the tariff transmittals, the pleadings, and the subsequent revisions. We find that no compelling argument has been presented that the tariff proposal filed by BellSouth is patently unlawful so as to require rejection or that the proposal warrants investigation at this time.

7. IT IS THEREFORE ORDERED that the petition against BellSouth Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 151, filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] BellSouth had originally proposed to restructure the Voice Grade Channel Termination rate elements for special access service. BellSouth Description and Justification (D&J) at 1-1. By Transmittal No. 168, filed June 27, 1988, BellSouth withdrew that portion of its proposed tariff and added language clarifying other provisions.

[2] *See* BellSouth D&J at 3-1.

[3] *See* BellSouth Transmittal No. 151, Section 2.6 at 3d Revised Page 79.

[4] *See* BellSouth D&J at 2-3.

[5] *See* New England Telephone and Telegraph Company and New York Telephone Company, DA 87-1525, released Oct. 21, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

TELEPICTURES
BROADCASTING
KSPR CORP.
(Assignor)

and BALCT-870929KO

GOLTRIN
COMMUNICATIONS,
INC.
(Assignee)

For Assignment of License of Television
Station KSPR, Springfield, Missouri

TELEPICTURES
BROADCASTING
CORP.
(Assignor)

and BALCT-870929KM
BALTTV-870929KN

GOLTRIN
COMMUNICATIONS,
INC.
(Assignee)

For Assignment of License of Television
Station KMID-TV, Midland, Texas and
Television Translator Station K12FM,
Fort Stockton, Texas

LORIMAR
TELEPICTURES
CORPORATION
(Transferor)

and BTCCT-870929KP
BTCTTL-870929KQ

GOLTRIN
COMMUNICATIONS,
INC.
(Transferee)

For Transfer of Control of Chico
Broadcasting Corp., licensee of
Television Station KCPM, Chico,
California and Television Translator
Station K18AO, Oroville, California

MEMORANDUM OPINION AND ORDER

Adopted: July 15, 1988; Released: July 19, 1988

By the Commission:

1. The Commission has before it for consideration: (a) an action of the Chief, Video Services Division of the Mass Media Bureau, of February 12, 1988, approving the above-captioned applications, and denying a petition to deny filed by Woods Communications Group, Inc. (Woods), licensee of Station KDEB-TV, Springfield, Missouri, *John B. Kenkel, Esq.* (MMB, released February 12, 1988); (b) a petition for reconsideration filed by Woods; and (c) a joint opposition filed by Lorimar Telepictures Corporation, Telepictures Broadcasting KSPR Corp. and Telepictures Broadcasting Corp. (collectively, LTC) and Goltrin Communications, Inc.[1] Although entitled a petition for reconsideration, it appears from a reading of the petition that Woods is actually seeking Commission review of the staff's ruling. Accordingly, the petition will be treated as an application for review filed pursuant to Section 1.115 of the Commission's Rules.

BACKGROUND

2. Woods filed its petition to deny the above-captioned applications because, it alleged, LTC had tortiously interfered with its ongoing contractual relations with the ABC Television Network (ABC). Woods' station, KDEB-TV, Springfield, Missouri, was an ABC affiliate prior to LTC's acquisition of KSPR(TV) in Springfield. KSPR(TV) was an independent television station at that time. Woods contends that, in its attempt to obtain an ABC affiliation, LTC threatened to terminate the ABC affiliation it has with its Midland, Texas, station, KMID-TV, if it did not receive an ABC affiliation for KSPR(TV). Woods maintained that this kind of conduct to secure an affiliation is improper and contrary to Commission policy, citing *National Broadcasting Co., Inc.*, 37 FCC 427, *recon. denied*, 37 FCC 705 (1964), and that LTC lacks the qualifications to be a Commission licensee. Thus, Woods requested that the applications either be denied or designated for hearing, pursuant to Section 309(e) of the Communications Act. Since it had a lawsuit pending in which these same allegations were raised, Woods further requested that the Commission either defer action on the applications or condition its decision on the matters raised, subject to the outcome of the lawsuit. Woods also argued that LTC had, pursuant to the terms of its contract with ABC, abdicated control and supervision of KSPR(TV)'s programming.

3. In considering Woods' petition, the Chief, Video Services Division, stated that Woods' reliance on *National Broadcasting Co., Inc.*, above, was misplaced, and that the Commission had re-evaluated and revised its policies and litigation reporting requirements for applicants, permittees and licensees, citing *Character Qualifications in Broadcast Licensing*, 102 FCC2d 1179, *recon. denied*, 1 FCC Rcd 421 (1986) (*Character Qualifications*). There, the Commission's concern was refocused on "misconduct which violates the Communications Act, Commission's Rules or policies and certain other non-FCC misconduct demonstrating the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies." *Id.* at 1190-91. The Commission also determined that only broadcast-related antitrust or anticompetitive

misconduct, such as alleged by Woods, that had risen to the level of an adjudicated violation would be relevant to the Commission's licensing concerns. *Id.* at 1201. Based on the foregoing, the Chief, Video Services Division, denied Woods' petition, since it had failed to show that LTC had violated any provision of the Act, the Commission's Rules or policies or had been adjudicated to have engaged in anticompetitive misconduct. The Chief, Video Services Division, also noted that Summary Judgment was granted in favor of LTC in the lawsuit filed by Woods.[2]

PETITION FOR RECONSIDERATION

4. In its petition, Woods initially asserts that the decision by the Chief, Video Services Division, is ineffective because it is beyond the proper delegation of authority set forth in Section 5(c) of the Communications Act and Sections 0.61 and 0.283 of the Commission's Rules. According to Woods:

> Section 0.283 . . . delegates the performance of functions and activities described in Section 0.61 to the Chief of the Mass Media Burau "provided, that the following matters shall be referred by the Chief, Mass Media Bureau to the Commission en banc for disposition * * * antitrust activity, unfair trade practices, and violations of law not previously considered by the Commission and * * * (9)(ii) other renewal and assignment and transfer applications which appear to call for evidentiary hearing." But, there is no provision for sub-delegation thereof; if the Chief of the Mass Media Bureau can't act under the delegation of authority, or prefers to refer it, it is to the Commission en banc, and not to a division.

5. Regarding LTC's qualifications, Woods contends that the decision is in error when it suggests that misconduct by a licensee in attempting to obtain a network affiliation does not concern the Commission anymore. Woods maintains that such misconduct precludes a finding that the public interest would be served by a Commission grant of an application, when the misconduct raised relates to network affiliation. This principle, Woods states, has existed since at least the 1970's when the Commission instituted its *Confidential Inquiry into Network Affiliation Matters* in Docket 18811, subsequently cited in *KFPW Broadcasting Co.*, 47 FCC2d 1090 (1974), *recon. granted* 72 FCC2d 511 (1979). *Character Qualifications*, above, does not change this established policy, according to Woods.

OPPOSITION

6. In its opposition, LTC states that Section 0.283 of the Commission's Rules permits the Chief of the Mass Media Bureau to act upon contested applications and Section 0.204(b) of the Commission's Rules permits the Bureau Chief to delegate such authority to a subordinate acting on his behalf. LTC asserts that Section 0.204(b), quoting *The Petroleum V. Nasby Corp.*, 50 RR2d 34, 36 (1981), "clearly permits appropriate subordinate officials, such as Division Chiefs, to act upon matters which have been delegated to the Bureau Chief," and such action by division chiefs has been repeatedly upheld by the Commission. *See Buffalo Valley Telephone Co.*, 89 FCC2d 1265, 1268 (1982); *Television Channel Assignments* (Sacramento, California), 55 RR2d 259, 262-63 (1983). Moreover, LTC avers that the issue raised by Woods regarding alleged contract interference need not be referred to the Commission for disposition. *Character Qualifications*, above, at 1208, according to LTC, sets forth the scope of anticompetitive actions of concern to the Commission and makes clear that the pendency of an unfounded common law tort action does not require referral of applications to the Commission under any provision of Section 0.283(a) of the Commission's Rules. Thus, LTC concludes that the Division Chief had authority to act on the Bureau Chief's behalf and that there was no requirement to refer the applications to the Commission.

7. Turning to the issue of character qualifications, LTC contends that the conduct alleged by Woods has no relevance to a consideration of its qualifications. Citing *Character Qualifications*, above, at 1195 and 1208, LTC maintains that the Commission is only concerned with violations of the Communications Act or Commission Rules and policies, certain criminal convictions and violations of broadcast-related antitrust and anticompetitive statutes, and that Woods does not claim that the alleged conduct falls within any of these categories. As to Woods' concern that *Character Qualifications* does not apply to the present situation or represents an abdication by the Commission of its public interest responsibilities, LTC asserts that the Commission established this policy to facilitate the "process of evaluation by which the Commission determines whether the public interest would be served by a grant of the application before it," and that it provides the exclusive guidepost for evaluation of a broadcast applicant's character qualifications. *Id.* at 1180 and 1183. Thus, LTC is of the view that the decision of the Chief of the Video Services Division was correct.

DISCUSSION

8. We have reviewed Woods' petition and we conclude that there is no basis for setting aside the decision of the Chief, Video Services Division. The delegations to the Chief of the Mass Media Bureau must be viewed in light of the policies set out in *Character Qualifications*, above. There is no reason for the staff to refer to the full Commission matters that we have found not to be actionable at this time. For the reasons set out below, Woods' contentions as to LTC's alleged unfair business practices are not now actionable. The staff, therefore, properly considered Woods' petition under delegated authority. Further, contrary to Woods' assertion, section 0.204(b) of the Commission's Rules specifically permits the Bureau Chief to subdelegate his authority to the Division Chief. *See The Petroleum V. Nasby Corp.*, above. Therefore, we reject Woods' contentions concerning the staff's action in this case.

9. Further, we find no support for Woods' belief that *Character Qualifications* does not govern its allegations of tortious interference regarding network affiliations agreements, and that we should therefore consider its allegations regardless of the lack of any final adjudication of the matter in court. Neither the Communications Act nor our rules specifically deal with the behavior at issue in the Lorimar/Woods lawsuit. In addition, the Commission has no policy regarding tortious interference with network affiliation agreements that is independently enforceable outside of our general concern with the manner in which such conduct reflects on a licensee's basic character qualifications. The Commission's determinations regarding the

use of threats by a network to withhold an affiliation in order to coerce a licensee to transfer a station and station bribery of network officials to secure favorable affiliation agreements do not establish any separate policy applicable to allegations of tortious interference with a network contract, such as those now before us. *See National Broadcasting Co., Inc.*, 37 FCC 427, 445 (1964); *KPFW*, 47 FCC 2d 1090 (1974). Therefore, in accordance with the procedures, established in *Character Qualifications*, the misconduct alleged by Woods would only be addressed by the Commission after it had been adjudicated by a court of competent jurisdiction. *Character Qualifications*, above, at 1201. Because the court proceeding is not yet final, consideration is premature.

10. In view of the foregoing, we find that the Chief of the Video Services Division of the Mass Media Bureau acted within his authority and that his decision was correct.

11. Accordingly, IT IS ORDERED, That the petition filed by Woods Communications Group, Inc., IS DENIED.

12. IT IS FURTHER ORDERED, That the action of the Chief, Video Services Division of the Mass Media Bureau, of February 12, 1988, which granted the applications to assign the license of Television Station KSPR, Springfield, Missouri, from Telepictures Broadcasting KSPR Corp. to Goltrin Communications, Inc.; to assign the license of Television Station KMID-TV, Midland, Texas, and Television Translator Station K12FM, Fort Stockton, Texas, from Telepictures Broadcasting Corp. to Goltrin Communications, Inc; and to tranfer control of Chico Broadcasting Corp., licensee of Television Station KCPM, Chico, California, and Television Translator Station K18AO, Oroville, California, from Lorimar Telepictures Corporatin to Goltrin Communications, Inc., IS AFFIRMED.

13. Finally, copies of this Memorandum Opinion and Order shall be sent by the Mass Media Bureau, Certified Mail - Return Receipt Requested, to the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Lorimar Telepictures Corporation, Telepictures Broadcasting KSPR, Corp. and Telepictures Broadcasting Corp. are subsidiaries of Lorimar Television Corporation.

[2] It also found that LTC had not given up control of KSPR(TV)'s programming to ABC. Woods has not contested this conclusion in the petition now before us.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

The Stockholders of SPANISH INTERNATIONAL COMMUNICATIONS CORPORATION (Transferor) — File Nos. BTCCT-860819KE-KI, BTCTT-860819KJ-KN, 002588-DSE-TC-86

and

SICC HOLDING CORP.
(Transferee)

For Transfer of Control of Spanish International Communications Corporation

BAHIA DE SAN FRANCISCO TELEVISION COMPANY (Assignor) — File No. BALCT-861211KZ

and

SICC ACQUISITION CORP.
(Assignee)

For Assignment of License of Television Station KDTV(TV), San Francisco California

ERRATUM

Released: August 12, 1988

On June 28, 1988, the Commission affirmed the Mass Media Bureau's grant of the above applications and denied certain applications for review of the Bureau's action, including that filed by TVL Corporation (TVL). FCC 88-219, released July 13, 1988. Paragraph 10 of the Commission's *Memorandum Opinion and Order* erroneously reported the status of the federal court litigation in question. Paragraph 10 is corrected to read as follows:

> 10. We now turn to a matter TVL alleges has been previously raised, but has not been considered; specifically, its claim that the SICC bidding process established under the auspices of the federal court in California was discriminatory in that it excluded a submission by TVL. TVL sought to challenge the bidding procedure established by the California court in that forum, but had been denied leave to intervene by the court. While its petition for rehearing of that court's decision was pending in the Ninth Circuit, TVL contended that the Commission should act to remedy the alleged discrimination. However, such action would be entirely inappropriate and at variance with the Commission's longstanding policy of declining to adjudicate matters properly pending in another forum with the authority to act on the claims presented. Further, the relief sought by TVL is simply beyond our regulatory jurisdiction; the judgment it sought, if appropriate, was properly the province of the court within which its petition was pending. We note, however, that the denial of TVL's intervention was upheld by the Supreme Court on January 19, 1988. *See* note 3, *supra*. Accordingly, we find no basis to overturn the Bureau's decision on this ground.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

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